87-1115

Supreme Court, U.S.
FILED
NOV 26 1987
JOSEPH F. SPANIOL, JR.
CLERK

# in the Supreme Court of the United States

OCTOBER TERM, 1986

NO. _____

JOSE L. OLAVARRIETA,

Petitioner,

vs.

UNITED STATES OF AMERICA,

Respondent.

and

THE BOARD OF REGENTS OF THE DIVISION OF UNIVERSITIES OF THE FLORIDA DEPARTMENT OF EDUCATION Legally: THE BOARD OF REGENTS, INC. AND/OR THE UNIVERSITY OF FLORIDA,

Respondents.

**Petition for a Writ of Certiorari to The United States Court of Appeals** For the Eleventh Circuit as it Relates to the Final Judgment of The United States District Court for the Southern District of Florida

JOSE L. OLAVARRIETA
9682 Fountainbleau Blvd. No. 402
Miami, Florida 33172
Pro-Se, Petitioner

100 pp

## QUESTIONS PRESENTED

1. Whether the Respondent, the Board of Regents of the Universities of Florida, et. al. as alter egos of the State of Florida, acting under color of State, violated Petitioner's rights secured by the United States Constitution under the Fifth, Thirteenth and Fourteenth Amendments, thereby substantiating a remedy under 42 U.S.C. 1983.

2. Whether the Respondent, The United States Government, through its Agency H.E.W. (Health Education & Welfare), participated in the illegal use of Federal Monies, where the Petitioner's Constitutional Rights were violated?

3. Whether the United States District Court for the Southern District of Florida in its Decisions and Judgment, violated Petitioner's Constitutional Rights to Due Process and Equal Protection, by Action, and Procedural Due Process by action and omission, in not addressing the Federal Questions submitted. By granting motion to dismiss to the Party that never requested the motion, and by granting Sumary Judgment and monetary Judgment **Without a Hearing.** Abused its authority in disregarding the Rules that govern the granting of Summary Judgment? F. Rule Civ Proc. 56 (c) and 28 U.S.C 636 (b)(1)(A) and 28 U.S.C. 636 (c).

4. Whether the United States Court of Appeals, Eleventh Circuit, violated Petitioner's Constitutional Rights of Due Process and Equal Protection of Law, by action and omission in not addressing the Federal Questions submitted. And by Affirming the Wrongs of District Court stated in question No.3?

5. Whether the Courts have totally disregarded Acts of Congress (Higher Education Act and Civil Rights Act)?

6. Whether Florida Supreme Court Order 43040 of July 31, 1973 is unconstitutional, by determining the creation of two different kinds of Attorneys in Florida. One kind with J.D. Degree and Transcript of Credits and another kind with

Academically Worthless Certificate, no Degree and no Transcript of Credits? Or was the Respondent, The Board of Regents of the Universities of Florida et. al. the ones that misinterpreted or deliberately violated the Florida Supreme Court Order?

## TABLE OF CONTENTS


| | Page |
|---|---|
| Questions Presented | i |
| Table of Contents | iii |
| Table of Authorities | iv |
| Other Authorities | vii |
| Opinion Below | 2 |
| Jurisdiction | 2 |
| Constitutional Law and Statutory Provision involved | 2 |
| Florida Statutes | 3 |
| Question No. 1 | 7 |
| Question No. 2 | 13 |
| Question No. 3 | 16 |
| Question No. 4 | 20 |
| Question No. 5 | 23 |
| Question No. 6 | 24 |
| Reasons for Granting the Writ | 25 |
| Conclusion | 31 |
| Constitutional Law Fifth Amendment | 2 |
| Thirteenth Amendment | 2 |
| Fourteenth Amendment | 3 |

## TABLE OF AUTHORITIES

Bartley v. Kremens, 402 F.Supp.1039, vacated and remanded 97 S.Ct.1709, 430 U.S. 119,52 L.Ed.2d 184

Berry v. School Dist. of Benton Harbor, 442F.Supp. 1280.

Camacho v. Bowling, 562 F.Supp. 1012.

Collins v. Wolfson, 498 F.2d 1100

Craig v. Carson, 449 F.Supp.385.

Douglas v. U.S., 562 F.Supp.593.

Fernandez-Roque v. Smith, 567 F.Supp. 1115.

First Nat.BenSoc. v. Garison, D.C. Cal.58F. Supp. 972 affirmed, C.C.A. 155 F.2d.522

GA Clairmont Development Co. v. Morgan 149 S.E.2d. 489,222 Ga. 255

Haitian Refugee Center v. Civiletti, 503 F.Supp. 442, modified 676 F.2d 1023.

International House v. N.L.R.B., 676 F.2d 906.

Matter of GAC Corp., 681 F.2d 1295

McKee v. Heggy, 703 F.2d 479.

McLaughlin v. Great Lakes Dredge & Dock Co., 495 F.Supp. 857.

Marbury v. Madison, Dist.Col., 1Cranch 137, 2L.Ed. 60.

Mo.Sharp v. National Biscuit Co. 78 SW 787, 179 Mo.553

Mo.State ex.rel.Jones v. Nolte 165 S.W.2d 632, 350 Mo. 271

North Alabama Exp.,Inc. v. U.S., 585 F.2d 783.

Okla. Midland Valley R.Co. v. Larson, 138 P. 173,41 Okl. 360-Chicago, etc., R.co. v. Baroni,122 P.926, 32 Okl.540

Parrat v. Taylor, 101 S.Ct. 1908, 451 U.S. 527 68 L.Ed. 2d 420

P.A. Jenkins v. Unemployment Compensation Bd. of review, 56 A.2d 686, 162 Pa. Super 49

Petition of Nisperos, 471 F.Supp. 296.

Phillip v. Carey, 517 F.Supp. 513.

Pollgreen v. Morris, 496 F.Supp. 1042.

Pollock v. Baxter Manor Nursing Home, 716 F.2d 545.

Schweiker v. McClure, 102 S.Ct. 1665, 456 U.S. 188, 72 L.Ed.2d. 1.

Shaare Tefila Congregation v. Cobb-55 USLW 4629 (May 18, 1987)(No.85-2156)

Sharp v. National Biscuit Co., 78 S.W. 787, 179 Mo.553.

Soberal-Perez v. Heckler, 717 F.2d 36.

St. Francis College v. Majid chaidan Alkhazraji-55 55USLW 4626(May 18, 1987)(No.85-2169)

Teague v. Alexander, 662 F.2d 79, 213 U.S. App.D.C. 234.

Union of Concerned Scientists v. Atomic Energy Commission, 499 F.2d 1069, 163 U.S.App. D.C. 64.

U.S. Ginsberg v. Lindel. C.C.A., Iowa, 107 F.2d,721

U.S. v. Nixon, Dist.Col.,94 S.Ct. 3090,418 U.S.683, 41 L.Ed.2d 1039

U.S. v. Olavarrieta., 812F.2d 640 (11th Cir. 1987)

West Penn Power Co. v. Train, 522 F.2d 302, certiorari denied 96 S.Ct. 3165, 426 U.S. 947, 49 L.Ed.2d 1183, rehearing denied 97 S.Ct.192,429 U.S. 873,50 L.Ed.2d155

Wright v. Cuyler, 517 F.Supp. 637.

W.Va.-Peerle v. Khamiller, 19 W.Va. 564, 573

## OTHER AUTHORITIES

28 USCA §636(b)(1)(A)
28 USCA §636(C)
28 USCA §1254(1)
20 USCS §1085
20 USCS §1141, 1171 et seq.
42 USCS §1983

Florida Supreme Court
Order 43040 - July 31, 1973

U.S. Constitution
Amendment V
Amendment XIII
Amendment XIV

Acts of Congress
Title IV(B) of Higher Education Act of 1965 as Amended
Title VI of the Civil Rights Act of 1964, as amended. 21.4274-42.1983 P.1165
Title VII of Civil Rights as amended on Discrimination based on national origin.

# in the
# Supreme Court
# of the
# United States

OCTOBER TERM, 1986

NO.

JOSE L. OLAVARRIETA,

Petitioner,

vs.

UNITED STATES OF AMERICA,

Respondent.

and

THE BOARD OF REGENTS OF THE
DIVISION OF UNIVERSITIES OF THE
FLORIDA DEPARTMENT OF EDUCATION
Legally: THE BOARD OF REGENTS, INC.
AND/OR THE UNIVERSITY OF FLORIDA,

Respondents,

**Petition for a Writ of Certiorari to**
**The United States Court of Appeals**
For the Eleventh Circuit
as it Relates to the Final Judgment of
The United States District Court for the
Southern District of Florida

The Petitioner, JOSE L. OLAVARRIETA, respectfully prays that a Writ of Certiorari issue to review the judgment and opinion of the United States Court of Appeals for the Eleventh Circuit entered in this proceding on January 22nd, 1987.

## OPINION BELOW

The opinion of the Court of Appeals for the Eleventh Circuit is reported at U.S. v. Jose L. Olavarrieta,812 F.2d 640(11th Cir. 1987) and on Appendix Pg.

## JURISDICTION

The judgment of the U.S. Court of Appeals of the Eleventh Circuit was entered on January 22, 1987, affirming the Judgment of the U.S. DISTRICT Court for the Southern District of Florida. A timely petition for rehearing and hearing EnBanc was denied on February 25,1987. This Petition for WRIT OF CERTIORARI was filed within 90 days of that date. This court's Jurisdiction is invoked under 28 U.A.C.A 1254(1).

## CONSTITUTIONAL PROVISIONS INVOLVED

### Amendments

ARTICLE V-

No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indicment of a Grand Jury, except in cases arising in the land of naval forces, or in the militia, when in actual service in time of war or public danger; nor shall any person be subject for the same offense to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.

ARTICLE XIII-

SECTION 1. Neither slavery nor involuntary servitude, except as a punishment for crime whereof the party shall have been duly convicted, shall exist within the United States, or any place subject to their jurisdiction.

SECTION 2. Congress shall have power to enforce this article by appropriate legislation.

ARTICLE XIV-

SECTION 1. All persons born or naturalized in the United States, and subject ot the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

## FLORIDA STATUTES SECTIONS

**§ 95.051 Limitationas Title 8**

**95.051** WHEN LIMITATIONS TOLLED

(1) The running of the time under any statute of limitations except ss. 95.281, 95.35, and 95.36 is tolled by:

(a) Absence from the state of the person to be sued.

(b) Use by the person to be sued of a false name that is unknown to the person entitled to sue so that process cannot be served on him.

(c) Concealment in the state of the person to be sued so that process cannot be served on him.

**607.271** INVOLUNTARY DISSOLUTION

(1) A corporation may be dissolved involuntarily by a decree of the circuit court for the county in which the registered office of the corporation is situated in an action filed by the Department of Legal Affairs when it is established that:

(b) The corporation has exceeded the authority conferred upon it by law; violated any provision of law whereby it has forfeited its charter; carried on, conducted, or trans-

acted its business in a persistently fraudulent or illegal manner; or has, by the abuse of its powers contrary to the public policy of the state, become liable to be dissolved.

(2) A corporation may be dissolved involuntarily by order of the Department of State when the Department of State has determined that:

(b) The corporation has failed for 30 days to appoint and maintain a registered agent in this state.

## 240.203 BOARD OF EDUCATION; Responsabilities for Higher Education

With respect to the State University System, the State Board of Education shall:

(1) Approve all rules adopted by the Board of Regents before they are filed with the Department of State; how ever, if any rule is not disapproved by the Board of Education within 60 days of its adoption by the Board of Regents, the rule shall immediately be filed with the Department of State.

(2) At all times exercise general supervision and control over the Board of Regents. Renumbered and amended by Laws 1979, c.79-222, § 89, eff. July 1,1979; Laws 1982, c.82-241, §33, eff. July 1,1982.

## 240.205BOARD OF REGENTS INCORPORATED

The Board of Regents is hereby created as a body corporate with all the powers of a body corporate for all the purposes created by, or that may exist under, the provisions of this chapter or laws amendatory hereof and shall:

(1) Have a corporate seal.

(2) Elect a corporate secretary.

(3) Have and employ a staff attorney and other authorized personnel.

(4) Have power to contract and be contracted with, to sue and be sued, and to plead and be impleaded in all courts of law and equity.

(5) Receive donations.

(6) Acquire real and personal property and contract for the sale and disposal of same.

240.209. BOARD OF REGENTS; Powers and Duties

(1) The Board of Regents is primarily responsible for adopting systemwide rules and policies; planning for the future needs of the State University System; planning the programmatic, financial, and physical development of the system; reviewing and evaluating the instructional, research, and service programs at the universities; coordinating program development among the universities; and monitoring the fiscal performance of the universities.

(b) Approve new degree programs for all state universities. In so doing, the board shall be mindful of the differentiated mission of the several universities. New colleges, school, or functional equivalents of any program **leading to a degree** which is offered as a credential for a specific license granted under the Florida Statutes or the State Constitution shall not be established without the specific approval of the Legislature.

(5) The Board of Regents is responsible for:

(a) Considering the relationship between tuition and general revenue appropriations in recommending tuition levels to the Legislature.

(b) Coordinating with the Postsecondary Education Planning Commission the programs, including doctoral programs, to be reviewed every 5 years or whenever the board determines that the effectiveness or efficiency of a program is jeopardized. **The board shall define the indicators of quality and the criteria for program review for every program.** Such indicators shall include need, student demand, and resources available to support continuation.

**The results of the program reviews shall be tied to the university budget requests.**

(c) Coordinating the roles of the universities in order to best meet state needs and reflect **cost-effective use of state resources.**

**240.2095.** Board of Regents program approval

(1) The Board of Regents shall establish criteria for the approval of new programs at state universities, which criteria include, but are not limited to, the following:

(d) New programs shall be approved only if they are consistent with the state master plans adopted by the State Board of Education and the Board of Regents.

(3) The Board of Regents may approve a new graduate-level program if:

(c) The regional need and demand for the graduate program was addressed and the community needs are obvious.

## QUESTION NO. 1

1. Whether the Respondent, the Board of Regents of the Universities of Florida, et. al. as alter egos of the state of Florida, acting under color of State, violated Petitioner's rights secured by the United States Constitution under the Fifth, Thirteenth and Fourteenth amendments, thereby substantiating a remedy under 42 U.S.C 1983?

## UNILATERAL ACTION - NO NOTICE - NO HEARING

### Statement Of The Case

This Petitioner, and several other members of the National Cuban Bar Association (Colegio Nacional de Abogados de Cuba), and the Havana Bar Association (Colegio de Abogados de la Habana), who were graduated from law schools of several Cuban universities, after successfully completing five years of Codified Legal System of Roman Laws, (where the Napoleonic Code derived from), petitioned the Supreme Court of Florida, to let them re-validate their Law Degree, due to the fact that at the time, 1973, nearly half a million taxpayers of Cuban origin were residing in the State of Florida; and that it was a welfare need for , Cuban-American bilingual lawyers who were able to communicate with them in Spanish, to explain them the American Laws in Spanish, and who were sensitive to their needs, and aware of their idiosyncrasies.

In following Due Process, the Court appointed Judge Paul Baker to hold public hearing to this effect. Judge Baker ratified to the Court that the need was evident and that the State should provide these taxpayers with a proper representation of Cuban attorneys, having the qualifications stated above.

On July 31, 1973, the Supreme Court of Florida issued Order No. 43040, creating the C.A.L.I. Program. R1-27 Exhibit No.4, of Petitioner's Brief on Appeal. Order is attached on appendix, pg. App.39. The Order specifically determines:

"Applicant who is an **American citizen**, was graduated from any of the four specified Cuban law schools."

"Once admitted to an **accredited law school** and after successful completion of one year in residence **the individual** student may be considered and **eligible law student** under Article XVIII of the Integration Rule of the Florida Bar."

On R1-27-4 No. 8 the Court states as follows: "Cuban lawyers, which upon successful completion would lead to the award of a J.D. or L.L.B. degree or **certification** to take the Florida Bar.

The Respondent and the Board of Regents et. al, in their discriminating obsession interpreted the phrase **(or certification to take the Florida Bar), as an option towards issuing an unacceptable degree for attorneys to practice law in this State.** A Certificate of Completion was awarded by the Department of Continuing Education **without Transcript of Credits, nor or Law Degree (JD),** after having completed more than 60 hours credit of legal curriculum, plus one year credit mandate by the Supreme Court, for our previous five years of Civil Law studies. After having taken all curriculum examinations provided by Law School professors of the Law School, who all the time instructed us.

Neverthless, the Respondents have shifted the program (on paper) to the Department of Continuing Education. But it appear to be still in Law School. The sentence was meant to read: **and** not **or** J.D. or L.L.B degree **and** certification to take the Florida Bar. Which is a requisite, not an option given by the Court to the University. It would have been absurd that the Court would have given the University that option, because in that event the Supreme Court of Florida would have been authorizing the University to violate Equal Protection Laws, Constitutional and Civil Rights of this Appellant, which is absurd for a Supreme Court to authorize such an atrocity.

Nevertheless, the University of Florida, under order of its "respondent superior," the Board of Regents Inc. of the Universities of Florida **shifted** the C.A.L.I. Program **to the Department of Continuing Education.**

## UNILATERALLY, WITHOUT NOTICE AND WITHOUT HEARING

More than being in flagrant violation of Due Process of law, granted this Petitioner and all persons by the 5th Amendment of the U.S. Constitution, is a sham to higher Education State Officers, **besides being an Affront to the whole legal profession.**

The above mentioned protection was extended to the citizens of the States of the American Union by the 14th Amend - ment of the U.S. Constitution, from the 5th Amendment.

"No Person shall be held to answer --- nor be deprived of life, liberty or property, without due process of law."[1-7]

## ALTER EGOS OF THE STATE

The Respondent(s), the Board of Regents et. al, as alter-

egos(s) of the State of Florida are limited by the 14th Amendment in their discriminating maneuvers as the one in issue in this Petition for Writ of Certiorary, as well as through the proceedings below.

At present there are TWO different kinds of attorneys.
1. Attorneys with **Law Degree** (J.D.) and the corresponding **Certificate of Credits.**
2. And **and another kind of diminished attorneys with an academically worthless certificate ⋆no degree-and no transcript of credits.**

⋆ Issued by the Department of Continuing Education where the CALI Program was shifted to.

There are approximately 115 practicing attorneys who have been **passed** by the Board of Bar Examiners of this State of Florida, who do not have an academically recognized law degree. If any of them want to take the Bar in any other State of their choice, they can't, because of lack of academically recognized documentation.

They can only practice in Florida, they are in **Bondage to the State if Florida,** they are **Chained to the State of Florida.** All other members of C.A.L.I. who successfully passed the Law Curriculum, where this Petitioner is included, are **precluded to take the BAR in any other State** of our choice, we can't, **because lack of academically recognized documentation** that the **Respondent,** The Board of Regents, **deny this Petitioner and all other members of C.A.L.I.** The above is a violation of the XIII Amendment of U.S. Constitution. "Neither slavery nor involuntary servitude" duality violates **Equal Protection under the Law;** in violation of the 5th and 14th Amendments of the U.S. Constitution, stated above; where **a suspect class** is evident as an **ethnic gorup. Hispanics** as national origing-Cubans as age-passed middleage students who after a colossal effort for the validation of a law degree, they all earned at their youthful years. Now in a non-maternal language, in a totally different system of law and in the middle fifty, sixty, and some passed seventy years old. It is almost impossible to properly qualify this atrocity where:

1. Earned law degree ordered by the supreme Court of Florida is denied. (Also contempt of Court)
2. Federal Monies were missued by the Respondents, in establishing the CALI program.
3. The great majority of students, obtained Federal Insured Loans, from Public Law - 89-329 Title IV B. As this Petitoner did. The loans were processed and approved by the Respondent(s) the Board of Regents, at.

The University of Florida financial office. Promissory Notes are attached to Appendix Pg. App.32.

At the end of the Program, Continuing Education could not award J.D. degrees, nor could order the Registrar of the University to issue a Transcript of Credits. Nor Continuing Education can perform formal examinations. This appellant and all other member of C.A.L.I. were given regular Law School examination in every subject of the law curriculum. **Continuing Education** was able to obtain **Moneys from Federal Funds** for Respondent(s) to implement the C.A.L.I. Program, but could not obtain Federal Aid through Law School. **Illegally Obtained Federal Moneis and Deceit** are the essence of this **Petition for writ of Certiorari.**[8-15]

## QUESTION NO. 2

Whether the Respondent, the United States Government, through ts Agency H.E.W. (Health Education & Welfare(, participated in the illegal use of Federal Monies, where the Petitioner's Constitutional Rights were violated?

## ILLEGAL USE OF FEDERAL MONIES

**Statement of the Case (Cont.)**

After the events stated above, confrontation between the University and C.A.L.I. members started. This is the basis for the **Third Party Complaint** vs. the Board of Regents, In., of the Universities of Florida and/or the University of Florida. **As a consequence** of this; **payments to the student loans were stopped.** This gave origin to the Plaintiff's Complaint. United States of America, now Respondent, **should have stopped the C.A.L.I. Program after receiving several complaints**. On the Contrary, Plaintiff is supporting the Third Party Defendants, and refused to investigate the whole ma 'er, as is his obligation, mainly when Federal monies are in issue.

The Director of the C.A.L.I. Program, Professor of Law, Julian Juerguensmeyer, mailed every student a letter dated January 23, 1975. Paragraph two states:

> "It is **not necessary** for those persons who have **applied** to take the Florida Bar Examination **to specifically request that an official transcript of your credits** be sent to **the Board of Bar Examiners. We will do that for you automatically."**

Thus **transcript of credits was implied.** It has never been issued to this appellant, nor to any of the members of C.A.L.I., practicing or not; nor the J.D. degree that goes with it.

Professor Juergensmayer on several occasions stated the C.A.L.I. student body **not to worry, that a J.D. degree will be granted to all students passing the exams. The U.S. Government's officers who dealt with the members of the Board of Regents, in not acting** when an investigation was requested **became coparticipants of the violations.** In the mean time **FEDERAL FUNDS WERE INVOLVED.** Furnished to the University through the Board of Regents and to the C.A.L.I. member students by the Plaintiff's agency of H.E.W. (The Department of Health Education and Welfare), which at the same time utilized the agencies, i.e., Washovia in Atlanta, Georgia, and several state and federal banks as may be verified from the Bank Notes signed by this Petitioner.

This Petitioner and all the students at C.A.L.I. Program started honoring their signed promissory notes, until the time they learned that the University changed C.A.L.I. to **Continuing Education. Violating Title IV B of Higher Education Act of 1965 as Amended,** which is an Act of Congress.

The intent of the Act Title XII USC, Sect. 1141(a), "to support and fund programs of study which grant academic credits and culminate in the award of a degree." Title VI of the Civil Rights Act of 1964, which is also an Act of Congress.

The Respondent, Plaintiff bellow, did not consider to defend Millions of Federal Monies by performing a simple investigation of the maneuvers of the Respondents, Third Party Defendant below, the Board of Regents, et.al., but preferred instead to claim on February 15, 1985 at 12:58 p.m., the insignificant amount of $3,920.79, obtained by this Petitioner, Third Pary Plaintiff below, from Respondent, Plaintiff's Office of H.E.W. In several documents of the proceedings below, **Petitioner has never refused to pay his legally contracted loans,** adding up to $4,000.00. Proof of it is a payment for $79.21, which was the first payment, as it was recognized by Respondent, Plaintiff, in his claim. The loan was undertaking

to pay Respondent, the Board of Regents, for tuition, books, tranportation and other expenses towards termination of C.A.L.I. Program.

When Petitioner learned that himself and others were to be victims of a **Magnificent Deceit** and an **Outrageous Discrimination,** in not being able to obtain their part of the bargain (Law Degree, J.D., nor transcript of credits). Then was when payments were stopped by this Petitioner, ;until this petition for Certiorari could be clearly and properly argued before this Honorable Court of Ultimate Instance.

Both Respondents ignored the mandates of F.S.240.209., Board of Regents Powers and Duties.

1(b) Approve new degree programs for all state universities.

5(b) The Board of Regents is responsible for Coordinating... doctoral programs.

They also ignored 20U.S.C.S. 1085, definitions for student loan insurance program.

(a) "eligible institution of higher learning"...

(b)(3) Provides an educational program for which it **awards a bachelors degree,** or provides not less than a two-years program which is acceptable for full credit toward such a degree.

## QUESTION NO. 3

Whether the United States District Court for the Southern District of Florida in its Decisions and Judgment, violated Petitioner's Constitutional Rights to Due Process and Equal Protection, by Action, and Procedural Due Process by action and omission, in not addressing the Federal Questio, s submitted. By granting motion to dismiss to the Party that never requested the motion, and by granting Sumary Judgment and monetary Judgment **Without a Hearing,** abused its authority in disregarding the Rules that governs the granting of summary Judgment F. Rule Civ Proc. 56(c) and 28 U.S.C. 636(b)(1)(b) and 28 U.S.C. 636(c).?

## CONSTITUTIONAL VIOLATIONS OF U.S. DISTRICT COURT

**Statement of the Case (cont.)**

**On March 28, 1985,** Petitioner filed a Third Party complaint v. the University of Florida, Respondent, and Third Party Defendant, for not having granted Petitioner his earned law Degree (J.D.), and its corresponding Trānscript of Credits. In doing this, they are the responsible parties for Petitioner not paying the Respondent, U.S. Government, his guaranteed student Federal loan.

## ACTS OF CONGRESS

Because Respondents, the Board of Regents Inc. et. al., The U.S. Governments Agency H.E.W., and the U.S. Attorney by not acting, were violating Acts of Congress, the higher Education Act of 1965 under Title IV B, as amended, 20USC 1141, 1171 et seq., and Title VI of Civil Rights Act of 1964, U.S.C.A. 42.1981., by as a "higher education institution," teaching law, to graduate lawyers, not granting J.D. Degree "acceptable for full **credit** towards such a degree." One Respondent by discriminating in not granting the Law Degrees,

and the other Respondent by not protecting tax payers Federal Monies, in iniciating an investigation after complaints were filed.

The University filed a Motion to Dismiss, which was late, even for filing by mail. Petitioner's Motion for Default was filed on May 16, 1985.

After this entry, another entry appears backdated to May 14, 1985, by which the University files a Motion to Dismiss Third Party Complaint. By Order of May 29, the Court denied Motion for Default, and ordered Petitioner to respond to Respondent (then third party defendent) Motion to Dismiss the Third Party Complaint.

## MOTION TO COMPEL ANSWER

On June 5, 1985, answer was filed as ordered by the Court, with a motion **to compel answer.**

The Court never acted upon this motion. This is violation of Procedural Due Process.

**On June 5, 1985,** Petitioner filed an Amended Third Pary Complaint including the Board of Regents and/or the University of Florida.

## NO ACTION IN COURT

The key action in this proceedings is the Third Party Complaint v. the Board of Regents, Inc., and/or the University of Florida.

The Board of Regents, Inc., is a Florida Corporation that has no ACTION IN COURT for want of registration with the Secretary of State, and/or for not having a Resident Agent registered with the Secretary of State, a ("sine qua non") requisite to be a De Jure Corporation. The State of Florida does not accept the De Facto corporation. They have Standing to face

charges, but **No Action in Court,** because they are not a legal Corporation. They have to face an Involuntary Disolution by a Writ of "Quo Warranto" issued by the Secretary of State. F.S. 607.271(1)(b),(2)(b). The District Court, in Violation of Procedural Due Process, granted the Board of Regents, Inc. the right to action they were not entitled to.

## MOTIONS THE COURT IGNORED (NEVER RULING UPON)

This Petitioner filed on **July (8)-1985, a Motion to Strike and Motion for Judgment on the Pleadings,** and a Motion for **Judgment by Default,** for **not having answered** the Amended Third Pary Complaint.

The Court just simply ignored the three Motions--**never even ruled on them.** (violation of Procedural Due Process by Omission).

## EXTEMPORANEOUS MOTION TO DISMISS (5 MONTHS LATER)

**Five months later,** on December 5, 1985, the Board of Regents filed a Motion to Dismiss the Amended Thrid Party Complaint, and the **Court admitted it. Violation of Due Process** is obvious --**3 motions** filed **5 months** earlier are not ruled upon: Strike, Judgment on the Pleadings and judgment by Default, five months later. Respondent, the Board of Regents, filed a Motion to Dismiss the Amended Third Party Complaint and it is granted, bordering on partiality.

## COURT ORDERS

On **January 15, 1986,** comes the unconceivable. The Court issues an Order granting dismissal of the Amended Third Party Complaint as to the University of Florida, which the University never requested and there is no entry for it.

On the same date the Court enters another Order granting Dismissal as to the Board of Regents on that Motion entered 5 months after the Petitioner's Motions not acted upon. The Court specified that by granting this Motion, the Third Party Action was then "Dismissed in its entirety."

## NEVER A HEARING

On several occasions, this Petitioner requested the Court to consolidate the Motions to dismiss and Schedule a **Hearing** date on the docket. Never was a **Hearing** granted. All the Proceedings were terminated without letting this Petitioner face the Judge by **having his date in court.**

On February 13, 1986, Notice of Appeal to the United States Court of Appeals 11th Circuit was filed by Petitioner.

## SUMMARY JUDGMENT GRANTED WITHOUT A HEARING

On **December 23, 1985**, the Respondent, Plaintiff then, filed a Motion for summary judgment v. this Petitioner. On April 19th, 1986, the Court granted the Plaintiff, Motion for Summary Judgment, **Without a Hearing. A monetary judgment** against Petitioner was also **granted without a Hearing.** Up to this point, the end of proceedings in District Court has been **by mail only.**[16-28]

## QUESTION NO. 4

4. Whether the United States Court of Appeals, Eleventh Circuit, violated Petitioner's Constitutional Rights of Due Process and Equal Protection of Law, by action and omission in not addressing the Federal Questions submitted. And by Affirming the Wrongs of District Court stated in Question No. 3?

## CONSTITUTIONAL VIOLATIONS OF U.S. COURT OF APPEALS 11th CIRCUIT.

**Statement of the Case (cont.)**

The Court of Appeals, not only violated this Petitioner's Constitutional Rights, in **not addressing any of the Constitutional Issues** alleged in the Appellant's Brief, and Reply Brief, which were also alleged to the District Court for the Southern District of Florida.

The Appeals court, limit itself to Affirm the decisions of the lower court. Committing exactly the same mistakes.

The District Court below, in its Order of April 9th, 1986, granting Summary Judgment on behalf of Respondent: (then Plaintiff), **without a Hearing,** the court states: "The Supreme Court of Florida oversaw the creation of a program of curse work administered by the University whereby **Cuban Refugees** who had practiced law in Cuba could expedite their legal training in this country before sitting for the Florida Bar examination."

The Court is in a great error when stateing that the program was for **"Cuban Refugees"** (suspect class for national origin). Perhaps, not deserving equal rights for some discriminatory minds. St. Francis College V. Majid Chaidan Alkhazraji 55 USLWH626 (May 18, 1987) (No. 85-2169).- Shaare Tefila Congregation V. Cobb. 55 USLW4629 (May 18,1987) (No. 85-2156).

The first requisite of Florida Supreme Court, Order 43040 of July 31, 1973 was that anyone registering for the C.A.L.I. Program, must be an **American Citizen.**

By this error derives an implication that the Court did not properly study the proceedings before rendering judgment. Error that was pointed out to the Court of Appeals in the above mentioned Briefs, but nevertheless, no Order of Mandamus, nor correction of any kind was issued by the Appeals Court.

In the District Court Order of January 14th, 1986, granting dismissal as to the University of Florida, the Court states: "The University of Florida has moved to dismiss the Amended Complaint on the grounds that..."

The University of Florida never, ever filed such a motion to dismiss the Amended Complaint. It was the Respondent, the Board of Regents, Inc., the one who filed such a Motion (5 months after Petitioner's 3 Motions, Default, Strike and Judgments on the Pleadings were ignored by the Court (never ruled upon)).

This was also pointed out to the Court of Appeals on the above mentioned Briefs, but no correction, or Mandamus was issued.

The Court below was in the obligation to **immediately transfer** to the U.S. Supreme Court, **the whole case, when Acts of Congress were in issue.** It was not done.

The Appeals Court has jurisdiction over District Courts decision invalidating Acts of Congress. 28 USC Section 1252., but no action was taken by the Court of Appeals.

Oral Argument of the Appellant was requested on all Briefs. They were systematically denied by the Court.

After the Courts of Appeals Judgment, Affirming the erroneous lower court, Judgments and decisions, of **January 22, 1987.** This Petitioner filed a Brief Petioning a **Rehearing** and **Hearing En Banc.** Both petitions were denied by the Appeal's Court Order of February 25, 1987.

After this Petitioner's, (then Appellant), all opportunities to plea his case on the Court of Appeals were exhausted, by the Rehearing Denials, mentioned above. The Court issued a Mandate modifying the original judgment of January 22, 1987, on **March 9, 1987,** ordering this Petitioner to **pay costs** to the appellees. To modify a Judgment after the appellant opportunities to have his case heard were denied and expired, is also a violation of Due Process, (injuring a defenseless party).

All citations appearing at the end of questions Nos. 2 and 3, concerning Due Process-Equal Protection - Right to be Heard . . . are applicable and are thus, realleged here, plus the ones that follow.[29-32]

## QUESTION NO. V

Whether the Court(s) have totally disregarded Acts of Congress. Federal Loan Insurance, under the Title(B) of **Higher Education Act of 1965,** as amended, 20U.S.C. Section 1141, 1171 et. seq. an **Civil Rights Act.** Title VI of 1964.

## ACTS OF CONGRESS DISREGARDED

**Statement of the Case (cont.)**

The Acts of Congress referred on the Question above, have been developed to a great extent in Questions III and IV.There is no need to say any more here.

## QUESTION NO. VI

Whether Florida Supreme Court Order 43040 of July 31, 1973 is unconstitutional, by determining the creation of two different kinds of Attorneys in Florida.

1. Attorneys with J.D. Degree, and transcript of Credits, which are credentials enough to take the Bar Examination in any State of the American Union.

2. Attorneys with a Certificate which is academically worthless because it was issued by the Department of Continuing Education, no law Degree, no transcript of credits, and no possibillities to take the Bar in any other State for lack of documentation with academic credentials.

Or was the Respondent, the board of Regents of the Universities of Florida et. al. the ones that misinterpreted or deliverately violated Florida Supreme Court Order No. 43040 of July 31, 1973?

It is presumed that all courts are Honorable. That all courts know the U.S. Constitution and all laws, mainly Federal Courts and State Supreme Courts. For this reason they try their utmost not to contradict the Constitution.

The Supreme Court of Florida ordered that CALI Program be instructed in an "Accredited law school", and that upon successful termination an LLB or J.D. degree, be granted and then be certified to take the Bar examination.

The Supreme Court of Florida Order 43040 has not ever mentioned **Department of continuing Education** in any of its parts.

Then it is the Respondent, the Board of Regents et al, the ones that in order to obtain **Federal Aid** to install the CALI Program, conceived the fraudulent idea, to shift the instruction of **411 to be attorneys at law** to the **Department of Continuing Education,** which on the contrary, teaching the CALI Program in the Law School as was ordered by the Court, no

Federal Aid would have been granted.

Thus all the responsability of all this process falls on the Respondent, the Board of Regents and/or the University of Florida.

Once this is decided by this Court, the other Respondent, the U.S. Government will get its guaranteed student loans of this Petitioner amounting to $4,000.00 as will be agreed upon between the two parties. Statute of Limitations will be waived by this Petitioner in demonstration of clean hands and good will maintained through all proceedings, or as this Honorable Court determines.

## REASONS FOR GRANTING THE WRIT

In essence, this Petitioner Appellant, Defendant and Third Party Plaintiff, has sincerely and in a candid manner, tried at the best of his abilities, to condense in a few pages how the Constitutional Rights of this Petitioner have been violated by the Respondents, along with the non applicability of Acts of Congress violations of USCS 1141 Title IV(B) of the Higher Education Act P.L. 89-329 and Title VI of the Civil Rights Act of 1964 as amended. U.S.C.A. 42, 1981 and Title VII when the Respondent, the Board of Regents, Inc., were in violation of Florida Supreme Court Order No. 43040 of July 31, 1973, which determined specifically that the C.A.L.I Program was to be taught by an **"accredited law school,"** neverthless, the Board and/or the University, the Board of Trustees Inc. of the Universities of Florida and the University of Florida, at one time, after the C.A.L.I. Program was started in Holland Law Center at the Law School, the program was **shifted** to the **School of Continuing Education,** which cannot issue J.D. degrees, nor can order issuance of Transcript of Credits. **Continuing Education** does not give examinations for the same reason they do not issue credits. But this Appellant and all C.A.L.I. Program students were subjected to the whole law school curriculum examinations of subject after subject. In-

structors were always Professors of the Law School, **to cover up.** This shift was done **Unilaterally, Without Notice** and **without a Hearing.** In flagrant violation of Due Process, and Equal Protection. As explained in Questions I through VI.

The District Judge has granted **a Summary Judgment** and a **Pecunary Judgment** against the Petitioner **without a Hearing,** while there were many material facts to be resolved as explained in detail in Issue I. of Petitioner's Brief on Appeal.

The District Court is in Error when the Court itself determines the inexistance of m;aterial facts never claimed by the Plaintiff, which is the responsible party in alleging the inexistance of material facts, according to U.S.C.A. Rule 56, as explained in detail in Issue I.

Under similar circumstances and frame of mind, the Distric Court grants a Motion to dismiss to both Third Party Defendants. One to the Board of Regents Inc. of the Universities of Florida, and one to the University of Florida. This ;exceptional rule was exercised **before neither one had filed an answer,** inspite of **Petitioner's Motion to compell answers.** The only one who filed a Motion to Dismiss the Amended Third Party Complaint was the Board of Regents Inc. It was filed 5 months after this Petitioner-Appellant has filed the Amended Third Party Complaint. In the meantime, this Petitioner had timely filed Motion for summary Judgment. Denied for lack of two pre-addressed pre-stamped envelopes as per requirement of local courts Rule 10(j), which could have been easily furnished if so ordered. After that, a timely filed **Motion for Default, Motion to Strike and Motion for Judgment on the Pleadings were filed one month after** the ammended **complaint was not answered.** All three Motions were **ignored** by the Court. **The District Court never ruled on the three motions.** After these three motions were filed, the Court ordered **a Stay in the Proceedings as of the Third Party Action.** This Order had **never been lifted.** Neverthless, the above mentioned appellee the Board of Regents Inc. filed

the Motion to dismiss, **in a late reaction of five months,** and in contempt of Court. The Court admitted and granted it: Procedural Due Process has never been violated in a more atrocious manner.

The District Court is in Error when in its confusion states that the University of Florida filed a Motion to Dismiss the Amended Third Party Complaint, which is incorrect. **The University never filed such a Motion** but **the Court went ahead and granted a Motion to Dismiss the Amended Third Complaint to the wrong Party.** As pointed out in detail in Issue III Petitioner's Brief on Appeal.

The District Court did not read or misinterpreted the **Supreme Court Order 43040 of July 31, 1973,** when it says that the C.A.L.I. Program was created by the Supreme Court, for the purpose that a group of Cuban **"refugees,"** be prepared to take the Bar Examination.

This is a great Error because the Supreme Court Order determines that all applicants for C.A.L.I. **must furnish evidence of American citizenship.** The Court states that this Appellant should be grateful for having been given a Certificate. **This certificate has no academic value at all,** and is not accepted by any institution of higher learning, nor law offices when wanting to hire attorneys, **not even the Respondent's employment office** when hiring attorneys for the U.S. Government. As explained in detail in Issue II. Copy of **Certificate, on Excerpts** attached to Appellant's Brief on Appeal, and on Appendix Pg. App.38.

The orders and Judgment issued by the U.S. District Court for the Southern district of florida, are reviewable by the U.S. Court of Appeals, Eleventh Circuit. 28 U.S.C.A. Section 1291.

Because the appeals Court mentioned above, should have never affirmed Judgments as related above. Should have issued writs of Mandamus and Corrections as explained in Question

IV. And Should have granted the relief claimed by this Petitioner (then Appellant). The Appeals Court should have used the Authority to Construe and Interpret the Supreme Law of the land. The U.S. Constitution, not allowing The Federal Government, nor the lower courts, nor the States, **to impair** or **divest vested rights** to the citizens eliminating, correcting or modifying actions **repugnant** to the U.S. Constitution.

The Fifth Amendment to the Constitution of the United States, which provides that no person shall be deprived of life, liberty or property without due process of law, secures the individual against any action of the federal government divesting vested rights.[33-42]

The District Court should have never admitted nor granted Plaintiff Appellee, Motion for Summary Jedgment, for all the reasons and supporting citations of jurisprudence. Thus, Motion for Summary Judgment, should have been reversed and remanded by the U.S. Appeals Court 11th Circuit.

That monetary judgment against this Petitioner, Appellant-Defendant-Third Party Plaintiff should have been reversed and remanded.

That District Court should have never admitted, nor granted Motion to Dismiss as of the Respondent, the Board of Regents Inc., for the reasons alleged.

Thus, the above mentioned Motion to Dismiss should have been reversed and remanded. **No action in Court** for the Board of Regents and the University, should have been enforced terminating the case. As prescribed by F.S. 607, 271(1)(b)-(2)(b). Default should have been declared against both Tird Party Defendants and Relief should have been granted this Petitioner as requested in the Amended Third Party Complaint (a) through (f). As well as the relief requested in the Appellant's Brief of this Petitioner, by the U.S. Court of Appeals.

The District Court should have never admitted, nor granted Motion to Dismiss as to the Respondent, (The University of Florida), as vicariously liable for its servitude to the wrong doings of the Board of Regents Inc.(Its respondeat superior).

The **University of Florida never requested that the Amended Third Party Claim be Dismissed.** Neverthless the District Court granted a Motion to Dismiss to that effect. This Petitioner requested the Court to reverse and remand the above mentioned Motion, and declare the University of Florida precluded of the State immunity (no color of law theory applicable), for its participation in the violation of this Petitioner's constitutinal Rights, and Acts of Congress, Protecting Civil Rights, the Higher Education Act, and others, alleged. The alleged discrimination against this Petitioner, and all other approximately 410 members of CALI were subjected to Intentional discrimination by the Respondents. The Board of Regents, et. al. for reasons of race, Spanish race. The Spanish do have a race of their own. In all the Spanish World, October 12, is called ("El Dia de la Raza") the Date of the Spanish Race, in Commemoration of Columbus date. (October 12. 1492). Thus, the Petitioner can change racial discrimination within the meaning of §1981, as Spanish constituted a group of people that Congress intended to protect. Because as a different race than caucasians, are among the peoples considered to be distinct race and hence within the protection of the Statute.

"Congress intended to forbid" at the least, membership in a group that is ethincally and physiogromically distinctive sub-grouping of "Homo-Sapiens".[43]

This Petitioner fells, and knows inside that, he and all others of CALI, were discriminated for his national origin or place of birth, Cuba. Which on the contrary been anglo-American, the Board of Regents **would have not dare to teach a group of Anglo-American group of would be lawyers in the**

**Department of Continuing Education.**

This Petitioner adheres to Justice Bvennan's opinion, that when he states in St. Francis Case: "I write separately only to point out that the line between discrimination base on" ancestry or ethnic characteristics, "ante, at-and discrimination based on "place or nation of ---origin" ante, at-is not a bright one.

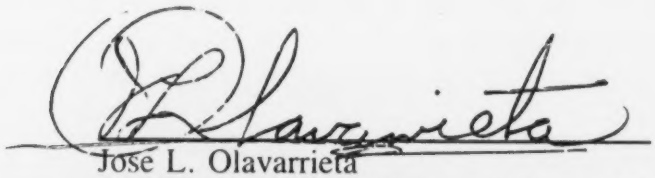
> The Courts opinion in Shave Tefila v. Cobb. States:
> "As St Francis makes clear the question before us is not whether Jews are considered to be a separate race by today standards, but whether, at the time §1982 was adopted, Jews constituted a group of people that Congress intended to protect." **For the same reasons Spanish people of Cuban Origin should be protected.** Shaare Tefila v. Cobb. 55 U.S.L.W. 4629 (May 1987)(No. 85-2156)

It is at this point that this Honorable Court may use its pre-emptive Power as top custodian of the U.S. Constitution, correcting and discarding all that is Repugnant to the Constitution, and also apply the Cooley doc;trine. Where the State cannot ignore Federal Acts, as Acts of congress are. As well as focusing in the criminal actions that may have been performed by Respondents.

## CONCLUSION

For the above mentioned reason, a WRIT OF CERTIORARI should be issued to review the judgments and opinions of the U.S. Court of Appeals for the 11th Circuit as it relates to the Judgments and Opinions of the U.S. District Court for the Southern District of Florida. And for giving this Petitioner the first opportunity to have his case heard in a Court of Law.

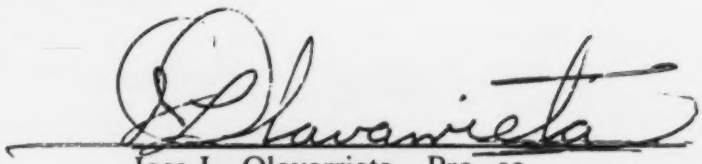
Respectfully submitted,



Jose L. Olavarrieta
9682 Fountainbleau Boulevard No. 402
Miami, Florida 33172
(305) 552-8618 (Residence)
(305) 696-6232 Ext. 52 (Office)

## CERTIFICATE OF SERVICE

I HEREBY CERTIFY that three true copies of the foregoing document ~~entitled~~, PETITION FOR WRIT OF CERTIORARI was mailed this 16 day of July, 1987, by U.S. Regular Mail, postage paid, to: Mr.B.B. Allen, Assistant U.S. Attorney, 55 South Miami Avenue, Miami, Florida 33130, to Mr. Arthur C. Wallberg, Assistant Attorney General, Department of Legal Affairs, the Capitol, Suite No. 1501, Tallahassee, Florida 32301, and to the Solicitor General U.S. Department of Justice, Room No.5143 9th Pennsylvania Avenue, N.W. Washington D.C. 20530.
(305) 696-6232 Ext.52



Jose L. Olavarrieta - Pro -se
9682 Fountainbleau Blvd. No.402
Miami, Florida 33172
Phone: (305) 552-8618

AUTHORITIES

[1] D.C. Ga. 1983. Where proposed government action is challenged as resting on incorrect or misleading factual premises or on misapplication of rules or policies to facts of particular cases, petitioners are entitled to timely and adequate notice detailing reasons for the propsaed action. U.S.C.A. Const. Amends. 5,14.

Fernandez-Roque v. Smith, 567 F. Supp. 1115.

[2] D.C. Ga. 1983. Due process requires notice reasonably calculated, under all circumstances, to apprise interested parties of pendency of the action and afford them an opportunity to present their objections. U.S.C.A. Const. Amend. 5.

Douglas v. U.S., 562 F. Supp. 593.

[3] C.A. Fla. 1982. An elementary and fundamental requirement of due process in any proceeding which is to be accorded finality is **notice** reasonably calculated, under all the circumstances, to apprise interested parties of the pendency of the action and afford them an opportunity to present their claims. Const. Amend. 14.

Matter of GAC Corp., 681 F.2d 1295.

[4] C.A. 2. 1982. The very essence of due process is the requirement of notice and an opportunity to be heard. U.S.C.A. Const. Amend. 14.

International House v. N.L.R.B., 676 F.2d 906.

[5] C.A. 5. 1978. Due process clause requires that **notice** be reasonably calculated to inform parties of proceedings which may directly and adversely affect their legally protected interests. U.S.C.A. Const. Amends. 5, 14.

North Alabama Exp., Inc. v. U.S., 585 F. 2d 783.

[6] C.A. Fla. 1974. One incident of constitutional protection against state deprivation of a property interest is that, at some point, **notice and a hearing** appropriate to the particular cir-

cumstances must be afforded.

Collins v. Wolfson, 498 F.2d 1100.

[7]C.A. Colo. 1973. Due process requires notice in any proceeding with an opportunity to appear and be heard before a valid final judgment may be entered. U.S.C.A. Const. Amend. 14.

[8] C.A.N.Y 1983 Hispanics as an ethnic group do constitute a suspect class for purposes of equal protection analysis. U.S.C.A. Const. Amend. 5

Soberal-Perez v. Heckler, 717 F.2d 36.

[9] D.C. Cal. 1979. Any policy of discrimination based of national origin violates the constitutional right to equal protection unless Government can show compelling reason to justify it. U.S.C.A. Const. Amend. 5.

Petition of Nisperos, 471 F. Supp. 296.

[10] D.C. II. 1983. Equal protection guarantees that similarly situated individuals will be dealt within a similar manner by the government.

Camacho v. Bowling, 562 F. Supp. 1012.

[11] D.C. N.Y. 1981. Equal protection claims calling for strict judicial scrutiny generally rise from context of discrimination against "suspect" class of persons along, for example, racial or alienage lines, or classification which deprives group of persons of fundamental right. U.S.C.A. Const. Amends. 14.

Philipp v. Carey, 517 F. Supp. 513.

[12] D.C. Ohio 1980. Under the Fifth and Fourteenth Amendments, both federal and state governments are prohibited from arbitrarily denying any citizen equal rights under the law. U.S.C.A. Const. Amends. 5,14.

McLaughlin v. Great Lakes Dredge & Dock Co.,495F. Supp. 857

[13] C.A.D.C. 1981. Selectivity in enforcement of laws based on unjustifiable standard, such as race, religion, or other arbitrary classification is impermissible. U.S.C.A. Const. Amend. 14.

Teague v. Alexander, 662 F.2d 79, 213 N.S. App. D.C.234.

[14] D.C. Mich. 1977. Under Fourteenth Amendment, official action at any hierarchical level which denies plaintiffs equal protection of the laws is unconstitutional. U.S.C.A. Const. Amend. 14.

Berry v. School Dist. of Benton Harbor, 442 Fl Supp. 1280

[15] D.C. Miss. 1976. The constitution protects equally citizens throughout the United States.

[16] U.S. Cal. 1982. Due process demands impartiality on the part of those who function in judicial or quasi-judicial capacities. U.S.C.A.f Const. Amend. 5.

Schweiker v. McClure, 102 S.Ct. 1665, 456 U.S.188, 72 L.Ed.2d 1.

[17] C.A. Ark.1983. A fundamental purpose of the due process clause is to allow aggrieved party opportunity to present his case and have its merits fairly judged. U.S.C.A. Const.Amend.14.

Pollock v. Baxter Manor Nursing Home, 716 F.2d 545.

[18] U.S. Neb.1981. Fundamental requirement of due process is opportunity to be heard, and it is an opportunity which must be granted at meaningful time and in meaningful manner.

Parratt v. Taylor, 101 S.Ct. 1908, 451 U.S.527,68 L.Ed.2d 420

[19] C.A.D.C. 1974. Due process requires that, where a right to be heard exists, it must be accommodated at a meaningful time and in a meaningful manner.

Union of Concerned Scientists v. Atomic Energy Commission, 499 F.2d 1069, 163 U.S.App.D.C.64.

[20] D.C.Fla. 1980. Essence of procedural due process is that everyone should receive the same fair hearing, regardless of the merits of their individual claim. U.S.C.A.Const.Amend.5.

Haitan Refugee Center v. Civiletti, 503F.Supp.442, modified 676 F.2d 1023.

[21] D.C.Fla. 1980. Fundamental, indispensable protections of procedural due process are notice and right to be heard by impartial decision maker, and both must be granted at meaningful time and in meaningful manner. U.S.C.A.Const. Amend. 5.

Pollgreen v. Morris, 496 F.Supp. 1042.

[22] D.C.Fla. 1978. Fundamental, indispensable protections of procedural due process are hearing before impartial decision maker after adequate notice of reason for deprivation with opportunity for individual to present his case. U.S.C.A. Const.Amend .14.

Craig v. Carson, 449 F.Supp. 385.

[23] Both due process hearing provided, whether provided before or promptly after deprivation of protected liberty or property interest, and notice of that hearing must be reasonable and meaningful in time and manner in which they occur; hearing concerning deprivation, whether before or after initial deprivation, must be before decision has become irrevocable and uncontestable, and there must be opportunity for individual whose liberty or property interest is affected to challenge deprivation and to present his own case on the matter. U.S.C.A. Const. Amend.14.

Craig v. Carson, 449F.Supp. 385.

[24] Notice of deprivation and of opportunity for due process hearing to contest it must be adquate to inform affected individual, and it must occur either before or swiftly after deprivation and within reasonable time to alert individual to hearing provided. U.S.C.A. Const. Amend. 14.

Craig v. Carson, 449 F.Supp.385.

[25] C.A.Okl. 1983. Opportunity for hearing provides due process only if preceded by notice reasonably calculated, under all the circumstances, to apprise interested parties of pendency of action and afford them opportunity to present their objections. U.S.C.A.Const. Amend.14.

McKee v. Heggym 703 F,2d 479.

[26] D.C.Pa. 1975. The opportunity to be heard is fundamental to due process of law and, without notice of that which is to transpire at a hearing, the right to be heard has little significance.

Bartley v. Kremens, 402 F.Supp.1039, vacated and remanded 97 S.Ct.1709,430 U.S.119, 52 L.Ed.2d 184

[27] C.A. Pa.1975. Due process requires, essentially, only a full and fair hearing before an impartial tribunal at a meaningful time and in a meaningful manner.U.S.C.A.Const.Amends. 5,14.

West Penn Power Co. v. Train, 522 F.2d 302, certiorari denied 96 S.Ct.3165, 426 U.S. 947,498 L.Ed.2d 1183, denied 97 S.Ct. 192, 429 U.S. 873,50 L.Ed.2d 155

[28] Hearing which comports with due process must ordinarily be accorded before a party can be condemned to suffer grievous loss. U.S.C.A. Const. Amends.5,14.

West Penn Power Co. v. Train, 522 F.2d 302, certiorari denied 96 S.Ct. 3165, 426 U.S. 947m 49 L.Ed.2d 1183, rehearing denied 97 S.Ct. 192, 429 U.S. 873, 50 L.Ed.2d 155

[29] Those who are charged with official duties, whether executive, legislative, or judicial, must necessarily constru the constitutions in some instances.(51)

U.S. - Marbury v. Madison, Dist. Col,m 1 Cranch 137, 2L. Ed. 60.

[30] So, in the performance of its assigned constitutional duties, each branch of government must initially interpret the Constitution, and the interpretation of its powers by any branch is due great respect from the other branches.

U.S. v. Nixon, Dist. Col., 94 S. Ct. 3090, 418 U.S. 41 L. Ed. 2d 1039.

[31] A Constitutional Provision relating to procedure applies, however, to every suit brought after its adoption, even though the case of action may have arisen before.

Okla. Midland Valley R Co. v. Larson, 138 P.173, 41 Okl. 360-Chicago, etc.,R.Co. v. Baroni, 122 P. 926, 32 Okl. 540

[32] A Constitutional Provision relating to a matter of procedure may be self executing.

Mo.-Sharp v. National Biscuit Co.78 SW 787, 179 Mo.553

[33] U.S. Ginsberg v. Lindel, C.C.A. Iowa, 107 F.2d 721

[34] First Nat.Ben.Soc. v. Garrison, D.C. Cal., 58 F. Supp.972, affirmed, C.C.A. 155 F.2d 522

[35] Cal.-Corpus Juris Secundum cited in Wissner, 201 P.2d 837, 844, 89

[36] Cal.App.2d 759, reversed on other grounds, 70 S.Ct. 398,

[37] 338, U.S. 655, 94 L.Ed. 424, rehearing denied 70 S.Ct. 619, 339 U.S.926, 94 L.Ed. 1348, conformed to 219 P.2d 553, 97 Cal. App.2d 930.

[38] Ga.-Clairmont Development Co. v. Morgan, 149 S.E. 2d. 489, 222 Ga. 255.

[39] Ky.-Corpus Juris Secundum cited in Darlington v. Board of Councilmen of City of Frankfor, 140 S.W.2d 392, 396, 282 Ky. 778.

[40] Mo.-State ex rel.Jones v. Nolte, 165 S.W. 2d 632, 350 Mo. 271.

[41] Pa.-Jenkins v. Unemployment Compensation Bd. of Review, 56 A.2d 686, 162 Pa. Super. 49

[42] St. Francis College v. Majid Chaidan alKhazraji 55 U.S.L.W. 4626 (May 18, 1987)(No.85-2169)

# Appendix

## APPENDIX
## TABLE OF CONTENTS


Page

Appendix A- Judgment, US Court of Appeals, 11th Circuit ..... App.1

Appendix B- Denial for Rehearing and Denial for Rehearing En-Banc US Court of Appeals, 11th Circuit ..... App.7

Appendix C- Denial for Pre-Hearing Conference to Appellee United States of America Respondent-from US Court of Appeals 11th Circuit ..... App.9

Appendix D- Final Judgment US District Court Southern District of Florida ..... App.11

Appendix E- Order Granting Plaintiff's Motion for Summary Judgment US District Court Southern District of Florda ..... App.13

Appendix F- Order of Dismissal as to the University of Florida, US District Court. Southern District of Florida ..... App.20

Appendix G- Order to Dismissal as to the Board of Regents, Inc. of the Universities of Florida, US District Court. Southern District of Florida ..... App.26

Appendix H- Order denying motion for Summary Judgment to Petitioner and Order determining that all proceedings on the Third Party Complaint shall be stayed. US District Court. Southern Distric of Florida .....App.30

Appendix I- Promissory Note $1,100.00
Promissory Note $900.00
Promissory Note $2,000.00 .....App.32

Appendix J- Certificate of Completion from the University of Florida Department of Continuing Education .....App.38

Appendix K- Order No. 43040 of July 31, 1973. Supreme Court of Florida .....App.39

Appendix L- Letter from Julian Juerguens meyer, Director of Cali Program .....App.44

## APPENDIX A

**In The United States Court of Appeals**
**For The Eleventh Circuit**

Nos. 86-5113 / 86-5263 / 86-5303

Non-Argument Calendar

There is an stamp reading:
DO NOT PUBLISH

UNITED STATES OF AMERICA
Plaintiff/Third-Party-Defendant/Appellee,

versus

JOSE L. OLAVARRIETA,
Defendant/Third-Party
Plaintiff Appellant,

THE BOARD OF REGENTS OF THE
DIVISION OF UNIVERSITITES OF
THE FLORIDA DEPT. OF EDUCATION,
and THE UNIVERSITY OF FLORIDA,
Third-Party Defendants/Appellees.

Appeals from the United States District Court for the
Southern District of Florida

(January 22, 1987)

Before GODBOLD, VANCE and JOHNSON, Circuit Judges.

PER CURIAM:

The United States, as guarantor of Jose Olavarrieta's federally insured student loans totaling $4,000, filed suit against Olavarrieta in order to collect the unpaid balance and interest on the loans. Inter-National Bank of Miami made the loans to Olavarrieta under the Federal Insured Student Loan Program, Title IV-B of the Higher Education Act of 1965, 20 U.S.C.A. §§ 1071-88. After Olavarrieta defaulted on the loans, the bank sought payment from the government. the government paid

off Olavarrieta's liability to the bank and then sought reimbursement from Olavarrieta by filing this suit.

Olavarrieta filed a third party complaint against the University of Florida, claiming that it had violated the Higher Education Act of 1965 and had breached its contract with him by failing to award him a J.D. degree. Olavarrieta amended this complaint to add the board of Regents of the Division of the Division of Universities of the Florida Department of Education as a third Party defendat and to add a claim for indemnification by the third party defendants for any sums he was found to owe the government. The district court granted the University of Florida's motion to dismiss, finding that the University of Florida lacks the capacity to be sued in its own name, that service of process had been insufficient, that any claim was barred by any applicable statute of limitations, and that the complaint failed to state a claim on which relief could be granted. In a separate order, the district court granted the Board of Regents' motion to dismiss, finding that any claim was barred by the statute of limitations and that the complaint failed to state a claim on which relief could be granted. Olavarrieta inmediately appealed both orders.

The United States moved for summary judgment, alleging that it was undisputed that Olavarrieta owed the money and that none of his defenses were applicable. Olavarrieta argued that the statute of limitations had expired. He did not contest that he had borrowed the money and signed the promissory notes therefor. The district court granted the government's motion for summary judgment but without setting an amount to which the government was entitled. Instead, the court directed the government to submit a proposed final judgment within ten days. Olavarrieta inmediately appealed this order as well. After receiving the government's proposed judgment, the district court entered a final judgment in favor of the United States. Olavarrieta filed a timely notice of appeal to the entry of the final judgment. All three appeals were consolidated in this proceeding.

In deciding this case, we find first that his Court has jusrisdiction over the appeal challenging the district court's orders dismissing the thrid party complaint. Admittedly the orders were not final judgments, and Olavarrieta prematurely filed the notice of appeal. However, because the orders completely dismissed the claims against the University of Florida and the Board of Regents, they were amenable to certification under Fed.R.Civ.P. 54)b). In re Yarn Processing Patent Validity Litigation, 680 F.2d 1338, 1339-40 (11th Cir. 1982). Therefore, the subsequent entry of a final judgment in the case established jurisdiction in this Court without Olavarrieta having to file a new notice of appeal as to those orders. Robinson v. Tanner, 798 F.2d 1378, 1382-85 (11th Cir. 1986); Jetco Electronic Industries. Inc. v. Gardiner, 473 F.2d 1228, 1229-31 (5th Cir. 1973).

This Court also possesses jurisdiction to review the district court's order granting summary judgment in favor of the government. The order granting the government summary judgment on the issue of liability only was not a final judgment, and because it did not dispose entirely of the government's claim against Olavarrieta, it was not amenable to certification under 54(b). Liberty Mututal Insurance Co. v. Wetzel, 424 U.S. 737, 742-44 (1976). Therefore, the subsequent entry of the final judgment did not cure the premature filing of a notice of appeal regarding that order. Robinson, 798 F.2d at 1382-85; United States v. Taylor, 632 F.2d 530, 531 (5th Cir. 1980). However, the notice of appeal filed after entry of the final judgment determining damages vests this court with jurisdiction to review the grant of summary judgment even thought the premature notice did not do so. McLaughlin v. City of LaGrange, 662 F.2d 1385, 1387 (11th Cir. 1981), Cert. denied, 456 U.S. 979 (1982).

Having determined that this Court has jurisdiction, we go on to hold that the district court properly dismissed the third party complaint against the University of Florida. The

capacity to be sued is determined by state law. Fed.R.Civ.P. 17(b). Under Florida law, the University of Florida is not endowed with an independent corporate existence or the capacity to be sued in its own name. Rather, those characteristics are bestowed on the Board of Regents as the head of Florida's university system. Fla. Stat. Ann. §§ 240.2011 and 240.205(4); Byron v. University of Florida, 403 F. Supp. 49, 54 (N.D. Fla. 1975). Therefore, the University of Florida is not a proper party in this action, and the district court was correct in dismissing the third party complaint asserted against it.[1]

The District court was also correct in dismissing the third party complaint against the Board of Regents. Olavarrieta simply has failed to state any legal or factual grounds for indemnification. Furethermore, to the extent the third party complaint seeks relief on account of the University's failure to award Olavarrieta a J.D. degree as promised, it does not set forth proper grounds for a third party claim under Fed.R.Civ.P. 14(a). Rule 14(a) allows a defendant to assert a claim against any person not a party to the main action only if that htird person's liability on that claim is in some way dependent upon the outcome of the main claim. Rule 14(a) does not allow the defendant to assert a separate and independent claim even though the claim arises out of the same general set of facts as the main claim. Southeast Mortgage Company v. Mullins, 514 F.2d 747, 749-50 (5th Cir. 1975); United States v. Joe Grasso & Son, Inc., 380 F.2d 749, 751-52 (5th Cir. 1967). Olavarrieta's third party claim alleging breach of contract or fraud account of the University of Florida's failure to award him a J.D. degree as promised is a separate and independent action from the government's action against him. Whether Olavarrieta is entitled to any relief on this claim is wholly independent of his liability to the government for defaulting on his student loans. Therefore, Olavarrieta has failed to state any appropriate grounds for maintaining a third party complaint against the Board of Regents.[2]

Olavarrieta also alleges a conspiracy between the Board of Regents and the United States to violate his civil rights. These conclusory allegations lack any factual basis and are therefore frivolous. See Fullman v. Graddick, 739 F.2d 553, 557 (11th Cir. 1984) (conclusory, vague and general allegations are insufficient to support a civil rights action alleging conspiracy). Furthermore, Olavarrieta failed to raise this claim before the disteict court in either his answer or his third party complaint. He may not raise it for the first time on appeal. Allen v. Alabama, 728 F.2d 1384, 1387 (11th Cir. 1984).

Finally, the district court was correct in granting summary judgment in favor of the government. As observed above, Olavarrieta did not deny that he had borrowed the federally insured money and that he had signed the promissory notes therefor. Instead, he argued that the statute of limitations had expired. Actions brought by the United States seeking money damages on account of a breach of contract are governed by a six year statute of limitations. 28 U.S.C.A. §2415(a). Olavarrieta contends that the cause of action accrued when the government became holder-in-due-course of the promissory notes--February 7, 1979. Therefore, he argues, the statute of limitations had expired by the time the government commenced this suit--February 15, 1985. However, courts have consistently ruled that the government's cause of action accrues whent he governemnt pays the lender. United States v. Tilleraas, 709 F.2d 1088, 1092 (6th Cir. 1983); United States V. Frisk, 675 F.2d 1079, 1081-83 (9th Cir. 1982); United States v. Bellard, 674 F.2d 330, 337 (5th Cir. 1982). Such a rule comports with the general rule that a surety's cause of action for indemnity or reimbursement does not accrue until payment of the principal's liability. ITT Rayonier, Inc. v. Southeastern Maritime Co., 620 F.2d 512, 514 (5th Cir. 1980). It is undisputed that the government satisfied Olavarrieta's liability to the bank on March 3, 1979; therefore, the district ocurt properly concluded that hte action was not barred by the statute of limitations.

Olavarrieta's argument that the government was not entitled to relief because the loan was illegal is without merit. Olavarrieta contends that the program in which he participated at the University of Florida School of law was not qualified to receive funds under the Higher Education Act. However, the Act defines eligible institutions as those providing post-secondary education leading toward a degree or recognized occupation. 20 U.S.C.A. §1085. Olavarrieta received the loans in order to enroll in ;the Cuban American Lawyers' Institute ("CALI") program offered at the University of Florida. The CALI program was open to Cuban refugees who had practice law in Cuba in order to qualify them to sit for the Florida bar examination. Therefore, the CALI program satisfies the Act's definition of an eligible institution. That Olavarrieta was not entitled to practice law in Florida until he passed the Florida bar examination does not mean that the CALI program was not a qualified program under the Higher Education Act.

Accordingly, the judgment of the district court is AFFIRMED.

---

[1]Because the district court properly dismissed the third party complaint against the University of florida on the grounds that the University of Florida lacked the capacity to be sued under state law, we need not address whether service of process was improper, whether Olavarrieta's claim was time barred, or whether the complaint failed to state a claim upon which relief could be granted.

[2]Because the claim asserted against the Board of Regents in the third party complaint could not be raised under Rule 14(a), we need not address whether Olavarrieta's claim against the Board of Regents is barred by the statute of limitation.

## APPENDIX B

**In The United States Court of Appeals**
**For The Eleventh Circuit**

Nos. 86-5113 / 86-5263 / 86-5303
Non-Argument Calendar

There is an stamp reading:
FILED
U.S. Court of Appeals
Eleventh Circuit
Feb 25, 1987
MIGUEL J. CORTEZ
CLERK

UNITED STATES OF AMERICA
Plaintiff/Third-Party
Defendant/Appellee,

versus

JOSE L. OLAVARRIETA,
Defendant/Third-Party
Plaintiff-Appellant,

versus

THE BOARD OF REGENTS OF THE
DIVISION OF UNIVERSITITES OF
THE FLORIDA DEPT. OF EDUCATION,
and THE UNIVERSITY OF FLORIDA,
Third-Party Defendants-
Appellants.

Appeal from the United States District Court for the
Southern District of Florida

ON PETITION FOR REHEARING AND SUGGESTION
FOR REHEARING EN BANC
(Opinion January 22, 1987 , 11 Cir., 1987, F.2d).

Before GODBOLD, VANCE and JOHNSON, Circuit Judges.

PER CURIAM:
( ✓ ) The Petition for Rehearing is DENIED and no member of this panerl nor other Judge in regular active service on the Court having requested that the Court be polled on rehearing en banc (Rule 35, Federal Rules of Appellate Procedure; Eleventh Circuit Rule 26), the suggestion for Rehearing En Banc is DENIED.

ENTERED FOR THE COURT:

_____
United States Circuit Judge

Illegible Signature Shown

## APPENDIX C

**In The United States Court of Appeals**
**For The Eleventh Circuit**

Nos. 86-5113 / 86-5263 / 86-5303
There is an stamp reading:
FILED
U.S. Court of Appeals
Eleventh Circuit
Setp 8, 1986
MIGUEL A. CORTEZ
CLERK

UNITED STATES OF AMERICA
Plaintiff/Third-Party
Defendant/Appellee,

versus

JOSE L. OLAVARRIETA,
Defendant/Third-Party
Plaintiff-Appellant,

versus

THE BOARD OF REGENTS OF THE
DIVISION OF UNIVERSITITES OF
THE FLORIDA DEPT. OF EDUCATION,
and THE UNIVERSITY OF FLORIDA,
Third-Party Defendants-
Appellees.

Appeals from the United States District Court for the
Southern District of Florida

ORDER:

Appellee, UNITED STATES OF AMERICA's motion for a prehearing conference is DENIED.

Appellee, UNITED STATES OF AMERICA shall have twenty (20) days from the date of this order in which to file their brief.

UNITED STATES CIRCUIT JUDGE
Illegible Signature Shown

## APPENDIX D

**United States District Court**
**Southern District of Florida**

Case No. 85-0438-CIV-SPELLMAN

UNITED STATES OF AMERICA,

Plaintiff,

versus

JOSE L. OLAVARRIETA,

Defendant,

FINAL JUDGMENT

This Court having entered its Memorandum Opinion and Order Granting Plaintiff's Motion For Summary Judgment on April 9, 1986, and in accordance therewith it is hereby

ORDERED AND ADJUDGED that Plaintiff United States of America have judgment against Defendant, JOSE L. OLAVARRIETA, in the sum of Six Thousand One Hundred Twenty Seven Dollars Eighty Cents ($6,127.80), being $3,920.79 for unpaid principal, $1,819.02 in interest accrued to November 18, 1984, at the rate of 7% per annum thereafter through April 18, 19896; and it is further

ORDERED and ADJUDGED that this Final Judgment shall bear interest as prescribed by 28 U.S.C. §1961, and shall be enforceable and on behalf of the United States of America in accordance with the provisions of Rule 69, Federal Rules of Civil Procedure, and such further provisions of Federal and State law as may be applicable.

DONE and ORDERED, this 23 day of April 1986, in Chambers, Miami, Florida.

EUGENE P. SPELLMAN
UNITED STATES DISTRICT JUDGE
Illegible Signature Shown

AUSA B. B. Allen
(two Certified)
Jose L. Olavarrieta
9682 Fontainebleau Boulevard
Unit No. 402
Miami, Florida 33172
Arthur C. Wallberg
Assistant Attorney General
Department of Legal Affairs
The Capitopl-Suite 1501
Tallahassee, Florida 32301

## APPENDIX E

**United States District Court**
**Southern District of Florida**

Case No. 85-0438 CIV-SPELLMAN
UNITED STATES OF AMERICA,

Plaintiff,

versus

JOSE L. OLAVARRIETA,

Defendant,

MEMORANDUM OPINION AND
ORDER GRANTING PLAINTIFF'S
MOTION FOR SUMMARY JUDGMENT

THIS CAUSE comes before the Court on the government's Motion for Summary Judgment agaisnt Jose L. Olavarrieta. The government seeks to prove that Olavarrieta failed to repay student loans for which the government acted as guarantor.

FACTUAL BACKGROUND

Several years ago, Olavarrieta sought funds in the form of student loans in order to enroll in the Cuban American Lawyers Institutew ("CALI") program offered at the University of Florida. The Supreme Court of Florida oversaw the creation of a program of course work administered by the University whereby **Cuban refugees** who had practice law in Cuba could expedite their legal training in this country before sitting for the Florida Bar examination.[1]

In order to be able to pay the fees and tuition, Olavarrieta applied for a Federally Insured Student Loan on three occasions.[2]

On or about October 18, 1973, Olavarrieta applied for a loan in the amount of $1,100.00 to cover the academic term commencing September, 1973 and continuing through March, 1974. On January 28, 1974, the Defendant executed a promissory note to International Bank of Miami, now known as the Royal Trust Bank of Miami, N.A. ("Royal Trust") for a Federally Insured Student Loan ("FISL") for $1,100.00.

This procedure was repeated on two more occasions. On July 29, 1974, Olavarrieta executed a promissory note to the bank for $900.00. A third note was executed on January 10, 1975, in the amount of $2,000.00. Olavarrieta does not dispute that these notes were made, signed and valid, and that he received and used the funds.

Each of the promissory notes bore simple interest at the rate of 7% per annum on the outstanding balance, and each provided for repayment of principal, together with interest thereon, to begin nine months after the date on which the maker ceased to carry, at an eligible institution, at least one-half the normal full-time academic workload, as determined by that institution.

As of June, 1975, Olavarrieta ceased to carry at least one-half the academic workload, and was therefore obligated to begin making payments on the notes, beginning in March, 1976. At that time, the total unpaid principal amounted to $4,000.00.

At some point prior to the assignment of the notes, the Defendant made a single payment of $79.21.

Once it became clear that Olavarrieta was obligated to begin his repayments, and failed to do so, Royal Trust sent several demand letters to him. Meeting with failure, the bank requested the assistance of the Department of Health, Education and Welfare in obtaining repayment. On June 1, 1977, HEW sent a demand letter to Olavarrieta; the letter was ignored.

In the interim, the statutory functions of the HEW were reassigned to the United States Department of Education. From March 18, 1979 through March 19, 1982 additional demand letters were sent to Olavarrieta from the Department of Education.

The government's attempts to recover payment on the notes also had proven futile. On February 7, 1979, Royal Trust submitted its application for the amount due in unpaid principal and accrued interest to the Department of Education for payment, pursuant to 20 U.S.C. §1080. Also on that date, the bank assigned each promissory note to the United States of America.

As of February 7, 1979, the total amount due to the bank was $4,575.36; $3,920.79 in unpaid principal and $654.57 in accrued interest. On March 3, 1979, HEW, through the Department of Education, payed to Royal Trust the full amount claimed by the bank on the notes.

Olavarrieta does not argue with the preceeding narrative on the facts. Instead, he challenges the government's position that it is entitled to summary judgment on the following grounds:that unanswered questions remain; the CALI program was not qualified under the Higher Education Act of 1965, 20 U.S.C §§1071-1088 (1980); that Olavarrieta was deceived by the material contained in the pamphlet entitled "Your Guaranteed Student Loan: Rights and Responsabilities" and a letter dated January 22, 1975 sent to him by the University of Florida; that the Supreme Court of Florida set up the CALI program with the intention of creating a "disminished or handicapped class of attorneys"; and that the government's claim is barred by the statute of limitations in 28 U.S.C. §2415(a).

## DEFENDANT'S CHALLENGES

First, this discussion of the Defendant's defenses must be prefaced with the point that no factual issues remain in this case. Olavarrieta does not challenge the government's motion on a factual dispute, despite his iterated contention that there are "unanswered questions". Whatever questions remain, they are not factual.

Second, the Court finds that the Defendant has offered no proof, nor even a suggestion, that the CALI program cannot be eligible under the Higher Education Act, as amended, for purposes of those enrolled in it receiving student loans. Its purpose was to benefit persons such as Olavarrieta and help them circumvent the very time consuming and arduous training that attorneys in this country must endure. The Defendant admits that he received his certificate from the program upon completion of his work. The program never made any promises

that said certificate would entitle him to become a member of the Bar without passing the the examination.

Third, the Court cannot glean from a thorough reading of Defendat's exhibits No.2 and No.3 how the material contained in either document could deceive an intelligent adult such as the Defendant. They are both basic documents which provide the reader with a brief outline of the terms of the loan and some technical details for completion of the program. They are, in effect, irrelevant to this action.

Fourth, the Defendant alleges that the Supreme Court of Florida, by providing a class of refugees benefits over and beyond those offered to any other group of exiles, actually intended to create a "diminished or handicapped class of attorneys". The Court will not respond to this allegation.

Fifth and finally, the Defendant states that this action is time barred. The Court finds that since the government paid in full its obligation as guarantor to the bank on March 3, 1979, and this suit was filed on February 15, 1985, the action was timely filed. The provisions of 28 U.S.C. §2415(a) state in pertinent part:

> Subject to the provisions of Section 2416 of this title, and except as otherwise provided by Congress, every action for money damages brought by the United States or an officer or agency thereof, which is founded upon any contract express or implied in law or fact, shall be barred unless the complaint is filed within six years after the right of action accrues.

Case law is clear that a guarantor's right to reimbursement accrues once it has paid the creditor in full for the principal's debt. United States v. Frisk, 675 F.2d 1079, 1082 (9th Cir. 1982); United States v. Tilleraas, 709 F.2d 1088, 1092 (6th Cir. 1983). Upon payment to the bank by the government, the Defendant became liable for the sums paid. United States v. Bellard, 674 F.2d 330, 335-56 (5th Cir. 1982); United States v. Tilleraas, 538 F.Supp. 1,6 (N.D. Ohio 1981), aff'd 709 F.2d 1088 (6th Cir. 1983).

Throughout this case, Olavarrieta has alleged that there was no consideration for the loans and that they should be found to be without legal effect. The Court is a mite incredulous at this proposition of the Defendant's. Aside from the fact that the CALI was created for his benefit as an attorney and officer of the Court, surely the Defendant could not think that he would be advanced funds; for his educational edification and not have a legal, if not moral, obligation to repay the lender. As stated in United States v. Wilson, 478 F.Supp. 448, 490 (M.D. Pa. 1979): "the (student) debtor also benefits from the insurance because the program makes loans which might not otherwise be available or would be available at higher rates of interest." There is no question that the Defendant received significant advantages by being privileged to participate in the FISL and CALI programs.

## CONCLUSION

The Court does not recall offhand a case that is more cut and dry. The Defendant took out three student loans under the FISL program and participated in the CALI program at the University of Florida. Olavarrieta received his certificate upon completion of the CALI program . His course work ended, and he became obligated to begin repaying his loans. He refused to do so. The bank sought repayment; the government sought repayment. He has had the benefit of over $4,000.00 and no detriment other than having to defend a lawsuit lawfully waged against him by the United States which now seeks repayment of the monies due.

There is no genuine issue of material fact remaining in this case. The facts were never in dispute, actually. Olavarrieta merely contested the government's legal rights to recover the money there being no question that the government is in fact entitled to the funds, summary judgment must be entered in its favor. Accordingly, it is hereby

ORDERED AND ADJUDGED that the government's Motion for Summary Judgment is GRANTED and summary judgment is entered in its favor and against the Defendant, JOSE L. OLAVARRIETA. The government shall submit to the Court a Final Judgment within ten days from the date of this Order.

DONE AND ORDERED in Chambers at Miami, Florida, this 9 day of April, 1986.

UNITED STATES DISTRICT JUDGE

cc: Jose L. Olavarrieta
B.B. Allen, AUSA
Arthur Wallberg, Esq.
Illegible Signature is Shown

## APPENDIX F

**United States District Court**
**Southern District Of Florida**

Case No. 85-0438-Civ-Spellman

UNITED STATES OF AMERICA

Plaintiff,

versus

JOSE L. OLAVARRIETA,

Defendant/Third-Party
Plaintiff

versus

THE BOARD OF REGENTS OF THE
DIVISION OF UNIVERSITITES OF
THE FLORIDA DEPT. OF EDUCATION,
and/or THE UNIVERSITY OF FLORIDA,

Third-Party Defendants-

ORDER OF DISMISSAL AS TO THE
UNIVERSITY OF FLORIDA:

THIS CAUSE is before the Court on Third Party Defendant University of Florida's Motion to Dismiss, filed on May 14, 1985. The Court will also address the memoranda submitted by the Plaintiff and Defendant/Third Party Plaintiff. The Court having reviewed the record and for the reasons set forth below, it is hereby

ORDERED AND ADJUDGED that the Motion to Dismiss iS GRANTED.

This action was commenced by the United States on February 15, 1985 to recover the unpaid balance and interest on student loans made to Olavarrieta by a local bank under the mechanism set forth in the Federal Insured Student Loan Program, Tit. IV-B of the Higher Education Act of 1965, 20 U.S.C §§1071-1088(1980). Olavarrieta does not dispute the Government's allegations that he executed three promissory notes to Inter-National Bank of Miami, now known as Royal Trust Bank of Miami, for a total of $4,000.00. These notes were made January 28, 1974, July 29, 1974 and January 10, 1975, in the amounts of $1,000.00, $900.00, and $2,00.00 respectively. Each of the notes bore simple interest at hte rate of 7% per annum on the outstanding balance, and each provided for repayment of principal, together with interest thereon, to begin nine months after the date on which the maker ceased to carry at least one-half the normal full-time academic workload at an eligible instution. Olavarrieta ceased to carry at least one-half the full-time workload in June, 1975. The Defendant did make a sole payment of $79.21, although when that payment was made is not clear from the record. Demands for payment were made by the bank, but to no avail. The United States then took over the task of sending demand letters, which also proved fruitless. Finally, Royal Trust Bank sought payment from the Government for the loans now in default, and were paid $4,165.45 on March 3, 1979. The Government, barely less than six years later, sought reimbursement from Olavarrieta by filing this suit.[1]

Olavarrieta has taken the position that he is not obligated to pay back the Government because, he claims: the loans were illegal, the action is time barred by the statute of limitations under Florida law, there was no consideration, and that because the Defendant did not receive a Juris Doctor degree, but only a "Certificate" signifying completion of his studies in the program for which he borrowed the funds, that the funding itself was for an illegal purpose. The Defendant has filed a Third Party Complaint (and Amended Complaint)

against the "Board of Regents of the Division of Universities of the Florida Depadfrtment of Education, a.k.a. the Board of Regents, and/or the University of Florida." The University of Florida has moved to dismiss the Amended Complaint on the grounds that: the University does not have the capacity to sue or be sued, insufficiency of process, lack of jurisdiction by this Court under the Eleventh Amendment, statute of limitations, and failure to state a cause upon which relief can be granted. The Court need not address all of the aforementioned grounds in detail because it is clear each one would be sufficient reason for this case to be dismissed.[2]

Part II of Chapter 240 of the Florida Statutes discusses the State University System. The Board of Regents may sue or be sued. Fla. Stat.§240.205(4). There is no comparable statute which empowers a University to sue or be sued. Also see Byron v. University of Florida, 403 F.Supp.49 (N.D. Fla. 1975)(an individual University lacks the capacity to be sued and must be dismissed.) Thus, the University of Florida is not a proper party in this action.

Although the University does not have the capacity to be sued in its own name, the Court notes that even if it did, service of process has been ineffective. The Defendant/Third Party Plaintiff served a copy of the Complaint on the resident agent of the University of Florida Central Florida Gator Club, Inc. This organization is made up of Gators (the name of the football team at the university) fans and is not related to the University in any other respect.

It appears that the statute of limitations would bar Olavarrieta's action against the University of florida, should he be able to sue it in the first place. In his Complaint, the Defendant alleges that the University breached a contract it had with him, and that the school violated the intent and requirements of the Higher Education Act of 1965. Because the contract is apparently an oral one, it would fall under the four year limitation

pursuant to Fla. Stat. §95.11(3)(k). Although it is not totally clear, the complaint intimates that these oral promises were made prior to the Defendant's enrollment in the program. Thus, the action accrued in 1975 at the latest, and is clearly time barred. As for the Defendant's allegations that the University "violated Federal Rules and Regulations" (emphasis in the original), the Court simply cannot discern a cause of action. It is possible that the Defendant is alleging that, by virtue of the school's failure to award him a J.D. or academic credits, tha the University had in effect breached an agreement with the Fedral government. In fact, Olavarrieta claims that he is a "beneficiary" of the Federal Financial Assistance program. Given tremendously liberal application of the law of contracts, the Defendant is still time barred from bringing this action under Fla. Stat. §90.11(3)(k).

Finally, the Court notes that even if the allegations in the Third Party Complaint were true, and even if the Defendant were not precluded from bringing the suit against the University, the Defendant's claim would fail. The United States' obligation under the Federal Insured Student Loan Program bring it squarely within hornbook definitions of a guarantor. United States v. Bellard, 674 F.2d 330, 333 (5th Cir. 1982)(footnot omitted). As guarantor, the United State's obligation arise only upon the principal's failure to perform. United States v. Griffin, 707 F.2d 1477, 1480 n.3 (D.C. Cir. 1983). It is undisputed that Olavarrieta defaulted on the loan, the bank sought payment from the United States, and the government now seeks reimbursement from the Defendant. The University does not have a role to play in this action. One of the few cases in which a defaulting student raises defenses to the demand for reimbursement is anomalous to the case at hand. In Griffin, supra, the student had received the loan directly from a for-profit vocational school, and had raised certain defenses to repayment directly with the school's collection agency. It was later discovered that the school had numerous problems of which the government was aware. The government nonetheless

paid the school for the defaulted loan. The Court in **Griffin, supra,** held that he court below had erred in granting summary judgment in favor of the government since Griffin had raised his defenses against the school prior to payment by the government, thus preserving them. Although the facts in **Griffin** differ significantly from those before the Court, the case does make on point clear. The defaulting student's defenses are to be made against the government, not the school, regardless of the school's status as lender. Once the defaulted loan is paid, the government, as guarantor, is the party Olavarrieta must deal with, not the University or the bank. The Third Party Plaintiff fails to cite any authority under which he may have a cause of action against the Third Party Defendant, or under which the Third Party Defendant is or may be liable to him for the amount claimed by the government against him.

In considering a motion to dismiss under Fed.R.Civ.P. 12(b)(6) the Complaint is liberally contrued and viewed in the light most favorable to the Plaintiff. Stephenson v. Gaskins, 539 F.2d 1066 (5th Cir. 1976). Where the Plaintiff appears pro se, allegations in the Complaint are held to a less stringent standards than formal pleadings drafted by lawyers. Haines v. Kerner, 404 U.S. 519(1972), reh'g denied, 405 U.S. 948 (1972). These well settled tenets do not, however, preclude dismissal of a complaint that cannot withstand any legal scrut iny. This is, in effect, what is before the Court. The Third Party complaint fails to withstand the motion to dismiss, and therefore must be dismissed.[3]

DONE AND ORDERED in Chambers at Miami, Florida, this 14 day of Jan. , 1986.

Illegible Signature is Shown

UNITED STATES DISTRICT JUDGE

cc: all parties

## FOOTNOTES BY THE COURT

[1]The Court had directed the parties to the original action to file memoranda of law discussing, among other topics, any relevant statutes of limitations. The Court finds that since the government paid in full its obligation as guarantor to the bank on March 3, 1979, and this suit was filed on February 15, 1985, the action was timely filed. The provisions of 28 U.S.C. §2415(a) state in pertinent part: "Subject to the provisions of Section 2416 of this title, and except as otherwise provided by Congress, every action for money damages brought by the United States or an officer or agency thereof, which is founded upon any contract express or implied in law or fact, shall be barred unless the complaint is filed within six years after the right of action accrues." Case law is clear that a guarantor's right to reimbursement accrues once it has paid the creditor in full for the principal's dept. United States v. Frisk,675 F.2d 1079, 1082 (9th Cir. 1982); United States v. Tilleras, 709F.2d 1088, 1092 (6th Cir. 1983). Thus, the government's cause of action accrued on March 3, 1979, and was timely filed.

[2]Although the Defendant/Third party Plaintiff was certified as having completed the Cuban American Lawyers Program at the University of Florida, his memoranda of law and pleadings have left almost every legal issue present in this case virtually untouched. Although read very closely ;and liberally, Olavarrieta's response to the motion to dismiss was ineffectual.

[3]Defendant/Third Party Plaintiff's Motion to Strike and/or Motion for Judgment on the Pleadings is DENIED. The Motion is without a shred of merit. This case shall proceed without delay.

## APPENDIX G

**United States District Court**
**Southern District Of Florida**

Case No. 85-0438-Civ-Spellman

UNITED STATES OF AMERICA

Plaintiff,

versus

JOSE L. OLAVARRIETA,

Defendant/Third-Party
Plaintiff

versus

THE BOARD OF REGENTS OF THE
DIVISION OF UNIVERSITITES OF
THE FLORIDA DEPT. OF EDUCATION,
and THE UNIVERSITY OF FLORIDA,

Third-Party Defendants-

ORDER OF DISMISSAL AS TO THE
BOARD OF REGENTS:

THIS CAUSE is before the Court on the Motion to Dismiss filed by the Third Party Defendant, the BOARD OF REGENTS ("Board") and the Defendant/Third Party Plaintiff's, JOSE OLAVARRIETA ("Olavarrieta") response thereto. For judicial economy's sake, the Court hereby incorporates the factual background provided in this order's companion order dismissing the University of Florida from the suit.

Initially, the Board's assertion that the Third Party complaint must be dismissed because the Eleventh Amendment divests the Court of jurisdiction is without merit. There is no question that under §240.205 (1979), the Board has the "cap-

acity to sue or be sued." Additionally, it appears that the case law cited is somewhat inapplicable in that it is the Board and not an individual university which is invoking the protection of the Eleventh Amendment in the case at bar.

Despite the inapplicability of the Eleventh Amendment as to this Third Party Defendant, the Board is corect that hte action is barred by any of the statutes of limitations conceivably pertinent. The Board cites 28 U.S.C. §2415 (six year limitation on actions brought by the United States); Fla.Stat. §95.11(2)(b) (five year limitation ona written contract action); and Fla. Stat. §95.11(3)(k) (four year limitation an action brought on an oral contract). As stated in the companion order, Olavarrieta states that statements were made to him by the Third Party Defendants prior to his enrollment. Thus, the action accrued in 1975 at the latest, and is therefore barred by any of the statutes of limitations listed above. Olavarrieta's response that the Board cannot invoke the time bars applicable "because the Third Party Defendant is in violation of F.S. 95.051(c) by not been [sic] registered as the person to be sued" is inaccurate and meritless. Therefore, Olavarrieta could not recover from the Board even he had made a claim upon which relief could be granted.

This brings the discussion to the point that Olavarrieta has failed to state a claim upon which relief can be granted regardless of the statutes of limitation. In the Amended Third Party Complaint, he simply fails to produce any factual or legal basis whereby he may be entitled to indemnifation or any of the other relief requested. His claims against the Third Party Defendants cannot insulate him from the realities of this case, no matter how strenuously he makes them. Olavarrieta's claim that the Third Party Defendants have acted contemptously is wholly absurd.[1]

Based on the above analysis of the Board's Motion to Dismiss and the response thereto, the Court can reach only one conclussion. In considering the Amended Third Party complaint most liberally and in the light most favorable to the Plaintiff as Stephenson v. Gaskins, 539 F.2d 1066 (5th Cir. 1976) directs, the Court, nonetheless must dismiss the Amended Third Party Complaint against the Board. It is therefore

ORDERED AND ADJUDGED that the Third Party Defendant's Motion to Dismiss is GRANTED.[2] In granting said motion, the Third Party action is now dismissed in its entirety.[3]

DONE AND ORDERED in Chambers at Miami, Florida, this 14 day of January, 1986.

UNITED STATES DISTRICT JUDGE

cc: B.B. Allen, AUSA
Arthur Wallberg, Esq.
Jose Olavarrieta
Illegible Signature Shown

## FOOTNOTES BY THE COURT

[1]It is true that the Board of Regents did not file its Motion to Dismiss until December 5, 1985 although the Motion to Dismiss filed on behalf of the University of Florida was filed May 14, 1985. This disparity, however, was a result of confusion as to the efficacy of serivice of process on the Board's part rather than its desire to thwart the smooth resolution of this case.

[2]The United States has recently filed its Motion for Summary Judgment; Olavarrieta's response thereto has just been filed. The original action is now ready for disposition.

[3]The additional relief requested by Olavarrieta such as causing an involuntary dissolution of the Board of Regents is summarily denied.

## APPENDIX H

**United States District Court**
**Southern District Of Florida**

Case No. 85-0438-Civ-Spellman

UNITED STATES OF AMERICA

Plaintiff,

versus

JOSE L. OLAVARRIETA,

Defendant/Third
Party Plaintiff,

versus

THE BOARD OF REGENTS OF THE
DIVISION OF UNIVERSITITES OF
THE FLORIDA DEPT. OF EDUCATION,
and/or THE UNIVERSITY OF FLORIDA,

Third-Party Defendants-

ORDER DENYING THIRD PARTY PLAINTIFF MOTION FOR SUMMARY JUDGMENT

THIS CAUSE is before the Court on the Defendant/Third Party Plaintiff's Motion for Summary Judgment filed June 14, 1985. The Court having reviewed the record and being otherwise duly advised, it is hereby

ORDERED AND ADJUDGED that said Motion is DENIED, without prejudice, for failure to comply with the requirements of Rule 10(J)2 of the Local Rules for the United States District Court for the Southern District of Florida. Until the Third Party Defendant's Motion to Dismiss is ruled on, all proceedings on the Third Party complaint shall be stayed.

DONE AND ORDERED in Chambers at Miami, Florida, this 8 day of July, 1985.

UNITED STATES DISTRICT JUDGE

Illegible Signature Shown

Copies Furnished:
All Counsel of Record

## APPENDIX I

**Department of Health, Education, and Welfare Office of Education Washington, D.C. 20202**

**PROMISSORY NOTE**

**Federal Insured Student Loan Program (Public Law 89-329, IV-B)**

CITY: MIAMI STATE: FLORIDA

Jose L. Olavarrieta hereinafter called the "maker," promise to pay to
Inter National Bank of Miami hereinafter called the "lender", located at
627 SW 27th Avenue, Miami, Florida 33135 the sum of $1100.00 which has been

advanced to me, together with simple interest at the rate of 7 percent per annum on the outstanding balance of such sum and authorized late charges, all reasonable attorney's fees, and other costs and charges necessary for the collection of any amount not paid when due. The lender will not collect or attempt to collect from the borrower any portion of the interest which is payable by the U.S. Government.

The maker further understands and agrees, and it is understood between the parties that:

I. Pursuant to an agreement with the U.S. Commissioner of Education, hereinafter called the "Commissioner," the lender has applied for Federal Loan Insurance under **Title IV, Part B of the Higher Education Act of 1965,** as amended, hereinafter called the "Act," on all sums advanced pursuant to this note. Such terms of this note are subject to interpretation shall be construed in the light of Federal Regulations pertaining to such Act, a copy of which is on file with the lender.

II. Repayment of Principal, together with interest thereon, shall be made over a period commencing 9 months after the date on which the maker ceases to carry, at an institution determined to be eligible for that purpose under the Act and Regulations pertaining hereto, hereinafter called an "eligible institution," at least one-half the normal full-time academic work load, as determined by such institution, and (except when paragraph IV(2) applies) ending not less than five nor more than ten years after such date but in no event over a period in excess of 15 years from the date of execution of this note. Interest shall accrue during the period prior to the commencement of repayment period but at the option of the lender need not to be paid during that period. Such accrued interest shall, at the commencement of the repayment period, be added to and become a part of the principal amount of the loan. Repayment of principal, together with interest hereon, shall be made in periodic installments in accordance with: Either (1) a repayment schedule to be provided by the lender prior to the commencement of the repayment period which will be made a part of this note: or (2) the terms of a separate instrument which shall be subject to the terms of this note and which the borrower agrees to execute prior to commencement of the repayment period.

III. The maker agrees to pay the lender in addition to interest and principal due an amount equal to the premiums that the lender is required to pay to the Commissioner in order to provide insurance coverage for the principal amount of this note. Payments covering the period of time extending from the date of execution of this note to the commencement of the repayment period (estimated in accordance with instructions issued by the Commissioner) shall be due and payable immediately.

IV. This note is subject also to the following conditions:

(1) The maker may at his option and without penalty prepay all or any part of the principal plus the accrued interest at any time.

(2) Installments of principal need not be paid during any period (A) during which the maker is carrying, at an eligible institution, a full-time academic work load, (B) not in excess of three years during which the maker is a member of the Armed Forces of the United States, (C) not inexcess of three years during which the maker serves as a volunteer under the Peace Corps Act or (D) not in excess of three years during which the maker serves as a volunteer under Title VIII of the Economic Opportunity Act of 1964; and such period in (A), (B), (C), or (D) shall not be included in determining the period during which repayment must be completed.

(3) Notwithstanding the minimum repayment period set forth in paragraph II, installment payments shall be made at an annual rate if not less than the difference between the combined annual rae of repayment on all other notes of the maker which are insured under the Act and $360.

(4) In the event of a failure to make any payment when due hereunder, the entire unpaid indebtedness including interest due and accrued thereon shall at the option of the lender or any other holder of this note become immediately due and payable.

(5) In the event of the maker's death or total and permanent disability the unpaid indebtedness hereunder shall be canceled.

(6) The maker shall inform the lender or any other holder of this note of any change or changes in his address or his Status as at least a half-time student.

| SIGNATURE | ADDRESS | DATE |
|---|---|---|
| Jose L. Olavarrieta | 7080 SW 23rd St. No. 122 | 1/22/74 |
| | Miami, Florida 33155 | 1/28/74 |

SIGNATURE IS SHOWN
CAVEAT
This note shall be executed without security and without endorsement, except that if the maker is a minor and this note would not, under State Law, create a binding olbigation, endorsement may be required. The lender shall supply a copy of this note to the maker.

**Department of Health, Education,**
**and Welfare Office of Education**
**Washington, D.C. 20202**

## PROMISSORY NOTE

**Federal Insured Student Loan Program**
**(Public Law 89-329, IV-B)**

CITY: MIAMI STATE: FLORIDA

Jose L. Olavarrieta hereinafter called the "maker," promise to pay to
Inter National Bank of Miami hereinafter called the "lender", located at
627 SW 27th Avenue, Miami, Florida 33135 the sum of $900.00 which has been

advanced to me, together with simple interest at the rate of 7 percent per annum on the outstanding balance of such sum and authorized late charges, all reasonable attorney's fees, and other costs and charges necessary for the collection of any amount not paid when due. The lender will not collect or attempt to collect from the borrower any portion of the interest which is payable by the U.S. Government.

SAME TEXT AS OF PROMMISSORY NOTE OF 1/28/74.

DATE 7/29/74.

**Department of Health, Education, and Welfare Office of Education**
**Washington, D.C. 20202**

## PROMISSORY NOTE

**Federal Insured Student Loan Program**
**(Public Law 89-329, IV-B)**

CITY: MIAMI STATE: FLORIDA

Jose L. Olavarrieta hereinafter called the "maker," promise to pay to
Inter National Bank of Miami hereinafter called the "lender", located at
627 SW 27th Avenue, Miami, Florida 33135 the sum of $2,000.00 which has been
advanced to me, together with simple interest at the rate of 7 percent per annum on the outstanding balance of such sum and authorized late charges, all reasonable attorney's fees, and other costs and charges necessary for the collection of any amount not paid when due. The lender will not collect or attempt to collect from the borrower any portion of the interest which is payable by the U.S. Government.

SAME TEXT AS OF PROMMISSORY NOTE OF 1/28/74.

DATE 1/10/75

## APPENDIX J

**University of Florida**

To all whom these Presents shall come, Greetings:
Be it known that
**José L. Olavarrieta**
Having satisfactorily completed special courses in the laws of several states, the State of Florida, and the federal laws of the of the United States in the
**Cuban-American Lawyers Program**
Is hereby awarded this Certificate and all the rights and privileges thereunto appertaining
In Witness Whereof, this Certificate, duly signed, has been issued and the seal of the University affixed.
Upon recommendation of the Faculty of
**The College of Law**
at Gainesville, this fourteenth day of June, A.D. 1975

Chief Justice, the Supreme Court of Florida President

**Dean, Division of Continuing Education**

Dean, College of Law

SEAL AND SIGNATURE OF EACH ARE SHOWN

## APPENDIX K

**In The Supreme Court of Florida**
**July Term A.D. 1973**
**Tuesday, July 31, 1973**

Case No. 43,040

IN RE: PROPOSED AMENDMENT TO
ARTICLE IV, SECTION 22,
RULES OF THE SUPREME
COURT RELATING TO THE
ADMISSION TO THE BAR

ORDER

The Ad Hoc Committee of the National Association of cuban Lawyers, Inc. has heretofore filed its petition for permission to take the Florida Bar Examination. Responses thereto have been received. A Commissioner has been appointed to conduct hearings, take testimony and render findings and recommendations. This has been accomplished and our Court isin receipt of such. The file and records appear complete and no necessity exists for further hearings or oral argument. Thus, oral argument is hereby dispensed with. In consideration thereof, the Court finds:

1. There are presently in the State of Florida n excess of approximately 350,000 refugee Cubans and this number continues to increase.

2. Cuban Nationals are receiving American citicenship in this state at an average rate of 7,000 per year.

3. There are approximately 250 lawyers among the Cuban American population who are American citizens and who were licensed to practice law in Cuba prior to December 31, 1960.

4. Since leaving their homeland the Cuban Nationals have become employed or opened their own businesses and have made a substantial contribution to the economy of the State of Florida.

5. An increasing number of cases in the Courts of Florida involve Cubans or Cuban Americans and there are presently approximately only 40 attorneys fluent in the Spanish language to adequately represent the increased Spanish speaking population.

6. There is a need in Florida for developing means of preparing attorneys who practiced law in Cuba prior to December 31, 1960 to qualify for admission to the Florida Bar.

7. This need is two-sided: one, for more effective representation of the Spanish community and; two, for the individu als who are petitioning to take the Bar to be further qualified that they may properly represent the Spanish speaking community in the Florida judicial system.

8. In Florida law schools, applicants for admisssion to achieve a **J.D. or L.L.B. degree and who hold a foreign degree in civil law may now be specially admitted and given advance standing.** This, however, has been on a case by case basis and dependent upon the qualifications of the individual applicant. Sub judice, **it appears that a course of study can be developed by Florida law schools which would lead to awarding a J.D. or L.L.D. degree or certification to successful Cuban American -Florida candidates.**

Accordingly, it is

ORDERED that

1. the Commissioner's report be and the same is hereby approved, ratified, confirmed and adopted by this Court as herein expanded upon or modified.

2. The petition fo the Havan Bar Association a party petitioner herein is granted, and said Association with the Ad Hoc Committee are hereby directed to expeditiously pay the costs of the Commissioner's investigation, which to date the file discloses to be in the amount of $2,696.75, said payment to be borne equally by the parties.

3. This Court recognizes as a proper and bona fide applicant for admission to take the Florida Bar Examination (subject to the other conditional qualifcations thereof not inconsistent herewith) and for admission to The Florida Bar, **any applicant who is an American citizen and bona fide resident of the State of Florida, who, prior to December 31, 1960, practice law in Cuba and was a graudate of any of the following schools of law:**

A. University of Habana (Havana);

B. Jose Marti University;

C. St. Thomas of Villanova Law School;

D. Oriente University.

4. That each applicant be required to furnish satisfactory evidence of the fact he was graduated from one of the aforementioned law schools prior to December 31, 1960 and was an attorney in good standing in the Republic of Cuba prior to December 31, 1960. Sufficient identification must be made by furnishing one or more of the following documents:

A. Diploma or photostatic copy thereof from one of the four recognized Cuban law schools;

B. Publication of name in the Official Gazette of the Republic of Cuba;

C. Certification in the form of Affidavit by the Havana Bar Association (in exile) or the National Association of Cuban Lawyers, Inc.;

D. Not less than three affidavits issued by any person who practiced law in Cuba prior to December 31, 1960.

E. Listing in Matindale-Hubbell Issues prior to 1960.

5. That an English written and/or oral proficiency examination be substituted for the LSAT (Law School Aptitude Test).

6. A thorough backgroung investigation of each applicant must be made **prior to his acceptance in any law school in this state** to insure good moral character **and acceptability to both the school of law** where application is made **as well as The Florida Bar.** The attached Application Form which has been prepared by Ashenden Research Corporation meets this Court's aproval and said Corporation shall conduct the preliminary investigation of each applicant (subject to further order of this Court) in order to expedite **implementation for admittance to one of the several law schools.** A character reference is of the utmost importance to eliminate those who would be unacceptable for admission to The Bar **before they and the law schools expend their time, effort and money.** The cost of this investigation will be borne by the individual applicant. **A copy of the preliminary application and investigation will be furnished to both the law school** to which application is made **and to the Florida Board of Bar Examiners.**

7. **Each aplicant furnish documentary evidence of American citizenship** and bona fide residency of the State of Florida.

8. That each applicant be required to attend an accredited law school in the State f Florida, **where the equivalent of one year's credit or accreditation be allowed.** It is recommended that a special course of study be developed and admission standards established to meet the needs of said applicants (Cuban lawyers), which, **upon successful completion would lead to the award of a J.D. or L.L.B. degree or certification to take the Florida Bar Examination.** This Court, while recognizing the need of the Cuban-American Communities, also recognized that their law is based primarily upon the Napoleonic code, as codified while that is Florida stems from Anglo-Saxson law, founded in the common law of England.

9. That paragraph (4) of the petition filed by the National Association of Cuban Lawyers, Inc. be denied. However, **once admitted to an accredited law school** in the State of Florida

and after successful completion of one(1) year in residence, the individual student may be considered "an eligible law student under Article XVIII of the Integration Rule of The Florida Bar.

10. It is the desire of this Court that such **admission to Florida law schools** will be implemented by September, 1973.

11. This Court retains jurisdiction of this cause to enter such further and other orders herein as may be deemed necessary.

It is so ordered

A True Copy
TEST:
Sid J. White
Clerk Supreme court

d
cc: Hon. H. Paul Baker, Judge
Hon. William Reeco Smith,
Hon. H.H. Taylor, Jr.
Hon. Thomas T. Cobb
Dean Joshua M Morse, III
Dean Joseph R. Julin
Dean Richard T. Dillon
Assoc. Dean Rafael C. Deni

## APPENDIX L

**COLLEGE OF LAW**
**Offices of the Faculty**
**UNIVERSITY OF FLORIDA**
**Holland Law Center**
**GAINESVILLE 32611**
**904 • 392-2211**

January 22, 1975

Participants
Institute for Cuban American Lawyers
Miami, First Session

Dear Attorney:

Now that our sixth quarter has already begun our goal is truly just "around the corner." I know that many of you are by now getting very tired but take courage -- it is almost over.

There are several matters I would like to call to your attention:

1. There seems to be some question about how the grades for Legal Writing will be treated. The only difference from a grading standpoint from Legal Writing and your other courses is that Legal Writing was divided into two parts. In spite of the two parts, you will receive one grade (5,4,3,2, or 1) for the entire course and that grade will be treated in exact same manner as the grade received in all other courses. In other words, in calculating your average, it will receive the same weight as, for example, your grade in Property.

**2. It is not necessary for those persons who have aplied to take the Florida Bar Examination to specifically request that an official transcript of your credits be sent to the Board of Bar Examiners. We will do that for you automatically.**

3. Graduation will be held in Gainesville on June 14. Detailed information is being distributed to each of you concerning that important event.

4. Here is our schedule for the rest of the course:

6th Quarter classes end -- March 8
Exams March 15 & 22
7th Quarter classes begin-March 29
7th Quarter classes end -- May 24
Exams May 31



5. The Survey of Florida Law Course which will be taught along with Real Estate Transactions in the 7th Quarter will cover Florida Constitutional Law, Legal Ethics and recent Florida Developments in matters covered in your substantive courses.

Best wishes for the coming weeks of study.

Cordially,

Julian Juergensmeyer
Professor of Law
Director, Institute for Cuban
American lawyers

SIGNATURE IS SHOWN